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BUREAU OF STATISTICS

CHARLES F. GETTEMY, Director

LABOR BULLETIN No. 70

LABOR INJUNCTIONS IN MASSACHUSETTS

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BUREAU OF STATISTICS

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The Bureau is organized into four permanent divisions: (1) the *Labor Division,* engaged in the collection and tabulation of Statistics of Strikes and Lockouts, Changes in Rates of Wages and Hours of Labor, Trade Union Statistics, and other data relative to the condition of labor in the Commonwealth; (2) the *Manufactures Division,* which collects and tabulates Statistics of Manufactures; (3) the *Municipal Division,* which collects and tabulates Statistics of Municipal Finances; (4) the *Free Employment Offices Division,* embracing the administration of the State Free Employment Offices, of which there are three, located respectively at 8 Kneeland Street, Boston; 24 Bridge Street, Springfield; and in the Bradford-Durfee Textile School Building, Fall River. During the period of taking and compiling the Census a fifth, the *Census Division,* is organized.

The functions of the Bureau and the duties of the Director are summarized in Sections 1 and 3 of Chapter 371 of the Acts of 1909, entitled "An Act to Provide for a Bureau of Statistics," as follows:

SECTION 1. There shall be a Bureau of Statistics, the duties of which shall be to collect, assort, arrange, and publish statistical information relative to the commercial, industrial, social, educational, and sanitary condition of the people, the productive industries of the Commonwealth, and the financial affairs of the cities and towns; to establish and maintain free employment offices as provided for by chapter four hundred and thirty-five of the acts of the year nineteen hundred and six and amendments thereof; and to take the decennial census of the Commonwealth required by the Constitution and present the results thereof in such manner as the General Court may determine.

. . . . . .

SECTION 3. The director of the Bureau of Statistics shall annually on or before the third Wednesday in January submit to the General Court a statement summarizing the work of the bureau during the preceding year, and shall make therein such recommendations as he may deem proper. He shall also prepare annually, for distribution as public documents, a report on the statistics of labor, which shall embody statistical and other information relating especially to labor affairs in the Commonwealth; a report on the statistics of manufactures, to be gathered as hereinafter more particularly provided for; a report on the financial statistics of the cities and towns of the Commonwealth, to be gathered as hereinafter more particularly provided for; and a report covering the work of the free employment offices. . . . The director may also publish, at such intervals as he deems expedient, bulletins or special reports relative to industrial or economic matters and municipal affairs. . . .

For a list of the publications of the Bureau see pages 3 and 4 of this cover.

MASSACHUSETTS LABOR BULLETIN.

Prepared under the Supervision of the Director of the Bureau of Statistics by Frank S. Drown and Roswell F. Phelps.

Vol. XIV, No. 9. December, 1909. Whole No. 70.

LABOR INJUNCTIONS IN MASSACHUSETTS.

Prefatory Note.

The dealings of the courts with problems arising from labor disputes present a question of very great importance. Numerous instances are found in recent years in which the courts have used the writ of injunction to restrain acts of labor organizations and of strikers, and it is probable that no feature of the attitude of the courts towards labor has aroused more discussion than the use of such injunctions. This fact has given rise to demands for legislation on the subject, taking two forms of what are known as "peaceful picketing" and "anti-injunction" bills, which, with some variations of form, have been introduced annually in the Massachusetts Legislature for several years.

At the public hearings given by legislative committees and commissions to which bills relating to this subject have been referred, each side has introduced a considerable amount of evidence as to the facts upon which the arguments *pro* and *con* have been based. In many cases this evidence, although usually accurate as to matters of court record, has been sharply contradictory. Nothing can be of greater importance to the Commonwealth in this matter than that our people, especially those who as legislators have directly to deal with the subject, should be placed in possession of a statement of facts prepared solely with the view of presenting not only the truth, but the truth uncolored by any of the feeling which active participation in an earnest struggle is likely to engender.

This report has, therefore, been prepared with a view to presenting a survey of litigation in labor disputes in this Commonwealth during the last 10 years with so much material taken from earlier periods as may be necessary for a complete understanding of the situation; and it has been the purpose to do this without comment other than necessary explanation, and in language as free from technicality as may be, to the end that our people may know exactly what have been the dealings of our courts with problems of this character and may have before them the information essential to the formation of an intelligent opinion as to the need, if any, of further legislation.

During the 11 years (1898 to 1908) covered by this investigation there occurred 2,002 strikes, in 66, or 3.29 per cent of which the employers

concerned sought injunctions restraining the strikers from doing certain acts complained of. In 46 strikes, or 2.24 per cent of the total number, injunctions were issued by the courts; in nine, or 0.44 per cent, there were proceedings for contempt of court; while in only two strikes were there any convictions for contempt of court. Of the 66 petitions, injunctions were granted in 46 cases (in one case a temporary injunction was denied and the *ad interim* injunction dissolved); in one case an injunction was denied; two cases were dismissed without injunctions being issued; eight cases were ended, without injunctions being granted, by stipulations in which the defendants agreed not to do the acts complained of; and in nine cases there were no proceedings after the bill of complaint was filed.

There are 18 other cases covered by this inquiry, six of which were petitions for injunctions to prevent employees from striking and in four of these cases injunctions were granted, one of which was later dissolved; seven bills were brought by employees against unions for alleged interference with their employment and other reasons; in three cases unions sought injunctions against other unions; in one case a union brought a bill against an employer; and in one case an employer sought an injunction against an employers' association.

The plan of this report is as follows:

Newspaper clippings relating to injunctions and court decisions in labor cases have been collected by this Bureau since January, 1905. These were used in connection with an examination which was made of the dockets of the Superior Court in every county in Massachusetts, the Supreme Judicial Court of the Commonwealth, and the United States Circuit and District Courts. The index cards of every case on file in these courts were examined, and all cases in which a labor organization was named as plaintiff or defendant, or in which the names of either plaintiff or defendant were the same as those of officers of labor organizations, were consulted to ascertain whether or not the case related to an injunction in a labor dispute. It is, therefore, believed that every case in which an injunction has been sought in a labor dispute in Massachusetts has been consulted in the preparation of this report.

The Bureau was granted permission to borrow the papers in the injunction cases from the courts of the counties in the eastern part of the State for the purpose of having copies made, a courtesy on the part of the judiciary of which I wish to record my sincere appreciation. For the Superior Courts of Worcester and Hampden counties it seemed more practicable to have copies made of the papers, and these were purchased from the clerks of courts.

The field work incidental to the inquiry was begun in June, 1908, and copies of the docket entries were made as late as May, 1909, in order to ascertain whether there had been any developments in any of the cases since the original copies of the papers were made. The material which had been accumulated in this manner by the Bureau represented a considerable mass of data which, obviously, required careful examination by a person of legal training whose judgment in the matter of editing and proper arrangement would have a value not possessed by a layman, and to whom could be entrusted the task of preparing such analysis of it as might seem to be desirable. After careful consideration, Mr. Herman LaRue Brown of the Boston bar was selected for this purpose, and he has written the text, arranged the compilations, and prepared the subject index.

CHARLES F. GETTEMY,
Director, Bureau of Statistics.

State House, Boston, December 1, 1909.

GENERAL INTRODUCTION.

While the law governing the rights of the parties to a labor dispute has recently been said by a justice of the Supreme Judicial Court of this Commonwealth still to be in a nebulous although clearing state,[1] the definition of these rights has proceeded to a degree which makes it apparent that if certain features of the situation are unsatisfactory to any of those concerned the remedy must be sought from the Legislature and not from the Judiciary, — the latter must take the law as it finds it.

Recognition of this fact and the recent extension of the use of the injunction have led to the repeated presentation to our General Court — as well as to the Legislatures of other States and to Congress — of measures designed to limit or control the action of the courts in dealing with labor litigation particularly with reference to the issue and enforcement of injunctions. In this Commonwealth the most prominent of these measures have been those known as the "Peaceful Picketing" and "Anti-injunction" bills which, with some variations of form, have been introduced annually since 1902.

The general character of these bills may be noted by reference to Senate Bills Nos. 133 and 143 of 1909 (see Appendix). Bills of the first class would make legal the establishment and maintenance of a "picket" or patrol of the neighborhood of the premises of an employer against whom a strike is in progress by a small number of representatives of the striking workmen for the purpose of "conversing in a peaceable manner" with those whom the employer may hire, or seek to hire, to take the places left by the strikers, in order to inform them of the conditions and endeavor to persuade them not to aid in breaking the strike. The so-called "anti-injunction" bills are intended to limit in various ways the issue of injunctions in cases arising from industrial disturbances and to provide for jury trials of issues of fact in such cases, particularly in proceedings to punish for contempt of court the violation of an injunction.

In addition to measures of this character there was introduced in the Legislature of 1909 a bill, Senate No. 256 (see Appendix), making it lawful for a trade union to impose fines upon those of its members who neglect or refuse to abide by its rules regulating their conduct in case of a strike or other contingency requiring common action. This bill resulted from the decision of the Supreme Judicial Court in *L. D. Willcutt & Sons Co.* v. *Driscoll* (see page 87). Like the others mentioned, it failed of passage.

It is urged by the representatives of organized labor that the wide extension of the use of the injunction has been devised as a weapon in the hands of the employers and that it is an unjustifiable attack upon the right of the citizen to freedom of speech and action; that the sweeping nature of injunctions which are issued, both as to the acts forbidden and as to the persons enjoined, is an abuse in many cases where a limited restraining order directed to some individuals might be justified; that the power of summary punishment for contempt of court is unjustly exercised in deprivation of a right to a jury trial for

[1] Mr. Justice Hammond in L. D. Willcutt & Sons Co. *v.* Driscoll, 200 Mass. 116, see *post*, page 87.

what is said really to be a judge-made crime; in short, that the passage of some remedial legislation as that above referred to is necessary if justice is to be done labor in its struggle for what it conceives to be its natural rights. And there is unquestionably an impression, on the part of many workingmen, which sometimes is voiced openly, that the courts have deliberately and directly discriminated against them and in favor of the employer. The feeling of workingmen that conditions in the courts as regards this class of litigation are unsatisfactory is not without some support from others in the community. Without suggesting any intentional unfairness or discrimination, it is thought and has been said by some students of social problems, by some lawyers and jurists, as well as by laymen of eminence, that the use of the injunction has been carried further than sound reasoning or the highest public policy warrant.

On the other hand, it is most earnestly insisted that the process of injunction as at present issued and governed by the courts is absolutely essential to the protection of our citizens in their recognized and most important constitutional rights, and that the law, civil or criminal, affords no other defence adequate to cope with conditions as they actually exist; that there has been neither discrimination nor injustice, but that the courts have administered even-handed justice under a system of law which, so far at least as these matters are concerned, it is neither necessary nor expedient to change.

So radical a difference of opinion as to the present position before the law of the parties to labor disputes makes the determination of the necessity for remedial legislation a problem of great difficulty. For its solution, the first essential is an understanding of just what the courts actually have done in these matters, and this report has been prepared with a view to presenting a statement, at once comprehensive and concrete, of the dealings of the Massachusetts courts with litigation arising from labor disputes.

Such a statement seemed naturally to fall into two main divisions, viz.: the law as declared by the Supreme Judicial Court and the application of it made by the trial courts. Accordingly what is believed to be a complete collection of the decisions of our Supreme Court which relate to matters here in question is printed in Part II of this report. Part IV is a condensed statement of the records of all cases relating to labor disputes entered in the Massachusetts courts in the decade from 1898 to 1908. Cases of contempt of court have also been noticed separately in Part V.

There is added certain explanatory matter regarding the court of equity and its methods of proceeding which may be helpful to readers who are not lawyers (Part I), and, by way of illustration, the papers in certain typical cases are printed in full in Part III.

I.

THE COURT OF EQUITY: ITS ORIGIN AND JURISDICTION.

1. INTRODUCTORY.

When conditions arise in the course of a strike which demand or afford opportunity for recourse to the courts, it is nearly always to the equity courts that application is made. What is asked in nearly all cases is the issue of injunction forbidding the doing of certain acts, as of "picketing" for example. The peculiarities of proceedings in courts of equity make them even less familiar to those who are not trained in the law than the ordinary or common law courts in which accident cases, for example, are tried. It seems wise therefore, by way of introduction, to state briefly what a court of equity is and how it does its work.

The Origin of the Court of Equity.

After the courts of common law had become pretty well established, it was seen that the system therein administered did not suffice completely to protect the people from injustice or oppression. In some situations the only recourse was to address a petition to the king. In time the practice of referring such petitions to an officer, called the chancellor, led to the establishment of a recognized and formal court, for the purpose of dealing with these matters. It was called, from the chancellor, the Court of Chancery. Its business was to administer that branch of the law which came to be known to lawyers as "equity." It was entirely independent of the courts of common law in its organization and differed widely in its way of doing business. In matters of principle, however, it was usually, though not always, in substantial harmony with the common law courts, taking to itself certain peculiar classes of cases wherein those courts, on account of their rigid rules and limited form of relief, were unable to prevent injustice. This defect of the common law courts was especially marked where an injury of serious nature was threatened, but none actually had yet been done. Before such a contingency the court of common law was helpless, its only power being to award money damages after the injury had been done, a most unsatisfactory situation. By reason of its origin the court of chancery had a certain flexibility of proceeding and of method of relief which gave it the power to meet emergencies of the kind referred to. But notwithstanding the circumstances which led to its establishment, there came in time to be built up for the court of chancery a set of rules or precedents for the control of its action within its special field which a judge may not disregard without violating his oath of office.

While, under the laws of Massachusetts, the same judges who pass on questions arising at common law also preside over the court sitting as a court of equity, they are when so presiding as truly judges of a court of equity and governed by the established rules of equity procedure as if the separate organization of the original courts of equity had been maintained.

Equity Jurisdiction in General.

It becomes necessary therefore to inquire as to the nature of the jurisdiction of a court of equity as distinguished from that of the ordinary courts of common law, and as to the peculiarities of the relief which it grants so far as they are significant in the kind of litigation reviewed in this report. As has been suggested, a court of common law can grant relief only when an injury has been done. The successful suitor in such a court gets a judgment — a declaration that the defendant owes him a certain sum of money. He is left to collect his judgment by such other

means as the law provides. No command is laid upon the defendant to pay or to do any other act. If, however, the case is one that a court of equity will treat as within its province, the court will issue a decree commanding that the defendant do such acts as justice to the plaintiff requires to be done, or to refrain from doing the acts which he is doing or threatening to do to the injury of the plaintiff. This direct action is the great characteristic of a court of equity, which, moreover, will, if need be, see that its commands are obeyed.

It is not in every sort of case however that a court of equity will thus interpose. Roughly speaking, it is only when the injured party has no remedy at common law or when that remedy — a judgment for money damages — is inadequate in that the injury is of a sort for which money damages cannot be a sufficient recompense, that a court of equity will take jurisdiction of the case.

The suitor who seeks the aid of a court of equity must therefore as a general rule show that he has been injured by the unlawful act of another and that he is without an adequate remedy at the common law. He must, however, do more than this. He must show that the cause is one of those cases which, aside from the absence of a common law remedy, have been determined to be properly within the equity jurisdiction. There are many kinds of these cases, most of which have no application to questions arising from industrial disputes. One of the firmly established principles of equity jurisdiction is, however, of great importance in this connection, namely, the proposition that when there is interference, actual or threatened, with property or rights of a pecuniary nature, the jurisdiction of a court of equity arises. This especially is true when the unlawful interference threatened would result in injury of such a nature that not only would money damages be insufficient as compensation but the consequences, practically speaking, would be irreparable. Where it is shown to a court of equity that a person is threatening action which will result in such injury to the property or rights of the plaintiff or has commenced and threatens to continue such conduct, the court will interfere and by its writ of injunction command the threatening party to desist. Except in that it is unlawful, the character of the act done or threatened is of no importance. It may or may not be an act of itself punishable as a crime. It is the threatened unlawful interference with the rights of the plaintiff and the resulting damage which is the foundation of the jurisdiction.

The Jurisdiction in Labor Cases.

Upon the principle thus outlined rests the power of courts of equity to take cognizance of questions arising in industrial disturbances and to issue the injunctions concerning which the discussion has arisen. Complaint is made that the defendants are interfering or are threatening to interfere unlawfully with some alleged right of the plaintiff's, — the right to hire whom he pleases for example. The court hears the matter and determines whether the alleged right is, in fact, a right of a sort to protect which it may take action. Having determined that, it proceeds to ascertain whether such right is really being interfered with, whether the means of interference is unlawful, whether the interference is likely to continue, and, continuing, to do irremediable damage. If the court determines all of these things to be true, it must issue an injunction commanding the persons complained of and before the court to refrain from doing the acts in question.

2. PROCEEDINGS IN EQUITY AND THE ISSUE OF INJUNCTIONS.

Such being the manner in which such matters come before a court of equity,

it remains to note some of the peculiarities of the court, and to explain somewhat more in detail its proceedings and the nature and enforcement of the chief of its processes employed in labor cases, — the writ of injunction.

The Bill.

The complaint spoken of is made by filing in court what is called a *bill in equity*.[1] This is a formal statement setting forth the facts upon which the complaint is based and praying the court to make such order to the persons named as defendants as may be necessary to prevent the threatened injury or to put a stop to it if already in progress. If the court is asked to issue an injunction there must be added the oath of the complaining party that the facts set forth are true or are believed so to be.

Temporary Injunctions and Stipulations.

Upon the filing of the bill, a *subpœna* is issued from the court which is served on the persons named as defendants. It requires them to appear at court upon a certain day and make answer to the bill. Where the bill states facts which indicate that the defendants already are doing, or are threatening immediately to do, acts which are or may be unlawful and which may result in irreparable injury to the plaintiff, an *order of notice* is issued, requiring the defendants to appear in court at a very early date and show cause why a *temporary injunction*[2] (or an "injunction *pendente lite*") should not be issued restraining them from doing the acts in question until the court shall have had opportunity to hear and determine the case upon its merits. If the facts stated indicate that owing to extraordinary circumstances the damage may be done if the court waits till the defendants can be served with an order of notice and a hearing had on the question of a temporary injunction, what is called an *injunction ad interim*[3] may be issued restraining the commission of the acts in question until such hearing can be had. Such *ad interim* injunctions were issued in very few of the cases noticed in this report.

Upon the return day of the *order of notice* the court hears the parties and determines whether it will order the issue of a temporary injunction. Such a hearing is not final, but it is sufficiently full to enable the court to decide what the probabilities of the situation are. If it appears to be necessary in order to protect the right of the parties during the period that must elapse before the real merits of the case can be gone into and determined, a temporary injunction will be issued commanding the defendants named to refrain from doing the acts complained of until the court, after hearing, shall make some further order. In several of the cases noted in this report the defendants filed a *stipulation*[4] that they would not do the acts complained of pending such hearing, and in such cases no temporary injunction was issued.

The Trial of the Facts.

The service of the *subpœna* brings the defendants before the court and makes them subject to its orders. The next step is the filing by them of their *answer* to the complaint. When this has been filed, and the complainant has taken issue with it, the case is ready for trial or the *hearing on the merits* as it is called.

In courts of common law the facts, if either party so desires, are always determined by a jury. This right in common law cases is "the constitutional

[1] For an example of a typical *bill in equity*, see *post*, p. 99.
[2] For an example of a *temporary injunction*, see *post*, p. 102.
[3] For an example of an *injunction ad interim*, see *post*, p. 114.
[4] For such a *stipulation*, see *post*, p. 114.

right of trial by jury." In courts of equity, however, the determination of the facts, as well as the law, has ever been a matter for the judge. But he may refer the case to an officer called a *master* whom he specially appoints to hear the evidence, determine the facts, and make a *report*[1] of them to him that he may take such action upon them as the law requires.[2] This practice is as old as is the court and was in force long before our constitutions, Federal or State, were written; the judge, however, need not follow this course unless he so desires.

Permanent Injunctions.

Once the facts are before the court, it determines under the law what action it will take. If the plaintiff has not made out his case the bill will be dismissed, and if a temporary injunction has been issued it will be dissolved. If it appears that there has been or is threatened unlawful interference with the rights of the plaintiff and that such interference will continue, if not prevented, and result in irremediable damage the court will order that the defendants be permanently enjoined from doing, personally or by their agents, the acts complained of. If a temporary injunction has been issued it will be continued permanently. If none is in force, a *permanent injunction*[3] will be issued. If either party is dissatisfied with the disposition of the case, an appeal may be taken in Massachusetts to the full bench of the Supreme Judicial Court for review, and this is in practically all cases final.

These are the ordinary steps in the conduct of a case which proceeds to final determination. In many instances, however, the matter is adjusted or the disturbance is over before the case has been carried to its logical legal conclusion, and it is then either dismissed by agreement or allowed to drop. In a large number of instances "strike" cases end with the issue of a temporary injunction, neither party caring to proceed further.

3. THE ENFORCEMENT OF THE COURT'S DECREE.

It remains to notice the manner in which the decrees of the court are made effective and its order enforced. When an injunction, temporary or permanent, is issued it is brought to the notice of the individuals named as defendants by service of a copy of the writ upon them by an officer of the court. From the moment of such service, at least, it becomes binding upon them under penalty of punishment if it is violated by them or caused to be so violated. As to all persons not individually named in the bill of complaint and in the writ of injunction, but within its terms, it is binding from the time when such persons have knowledge of its existence and terms, and thereafter they too may be punished if they disobey the command of the court. For example, it is now customary to name in the bill certain of the officers of a given labor organization involved, "individually and as representative of the interests of the other members of the union who are made defendants but who are too numerous to be individually named." If an injunction is issued it is made to run against the persons named and also against each of the other members of the union in question, their agents and servants, although not against the union itself. Service is usually made upon the individuals named and is binding upon them at least from that time. As to the other members of the union it is binding from the time when they know of the terms of the injunction. No one can be punished

[1] For a *master's report*, see *post*, p. 102.

[2] The case also may be referred to a master for determination of the facts as to the necessity of a temporary injunction, and this course is sometimes followed in this class of cases.

[3] For an example of a *permanent injunction*, see *post*, p. 125.

for violating an injunction of which he does not know. And it is very doubtful if an injunction, in this Commonwealth at least, can be issued so as to bind persons who in some proper way have not been made defendants in the bill of complaint or who have had no opportunity to have their interests looked out for before the court.

4. CONTEMPT OF COURT.

When a person upon whom an injunction is binding violates it by doing one of the acts therein forbidden by the court he is guilty of what is called *contempt of court* and is liable to summary punishment by the court whose order he has disobeyed. It is the same as if a witness were to refuse to obey the judge's direction to answer a question put to him by counsel. The only difference is that such refusal being in the presence of the court is called a *direct contempt* while the violation of an injunction usually is not in the presence of the court and is called *indirect contempt.* In cases of direct contempt the judge takes such immediate action as he sees fit, and may order the offender to pay a fine or may sentence him to imprisonment for such a time as the case seems to demand. There is no intervention of a jury. In this class of contempts no question is now raised, in this Commonwealth, as to the propriety of such summary punishment. But in the case of indirect contempts the proceeding is slightly different. The complainant in the suit in which the injunction was issued files with the court which issued it what is called a *petition for an attachment for contempt,* setting forth the existence of the injunction, the fact that the person alleged to have violated it knew of it and of its terms and was bound by it, the nature of the alleged violation, and the circumstances thereof. Thereupon an *order of notice* is issued to the person alleged to be in contempt directing him to appear and show cause why such an attachment should not be issued. This is served upon him, and if he does not appear the attachment issues. If he does appear, a hearing follows before the judge and the facts are inquired into. If the judge finds that there has been a violation of the injunction, the respondent is adjudged in contempt and ordered to pay a fine or sent to jail.

As has been stated, the acts forbidden by an injunction may or may not be a crime, and therefore the violation of an injunction may also be an act which renders the doer liable to criminal prosecution and punishment. With that, however, the court of equity has nothing to do. It is not punishing a crime nor does it concern itself whether the act is or is not a crime. Its only purpose is to compel obedience to its orders and to punish their disobedience. Usually however, the judge, in his discretion, recognizes the practical features of the situation, and in fixing sentence considers the action or probable action of any of the criminal courts in cases where the violation of the injunction happens also to be a crime.

II.

THE LAW RELATIVE TO LABOR DISPUTES.

1. INTRODUCTORY.

In Massachusetts the questions of law arising in cases which grow out of labor disputes remain for practical purposes as yet unaffected by legislation. The inquirer who wishes to know what is the law applicable to a given situation must find his answer in the decisions of the courts or by the application of principles deduced from those decisions.

courts when confronted with similar states of facts. These decisions, as far as they relate to the matters under investigation, have been collected and are printed herewith.

Reference to these decisions will enable the inquirer to determine in what manner our courts have treated these matters as they have come before them and what has been declared to be and must be regarded as the Massachusetts law. It is not the present purpose to endeavor to state fully the legal situation. As to that, the decisions and court records which are printed as part of this report speak for themselves.

2. FUNDAMENTAL PRINCIPLES.

A few fundamental although somewhat abstract principles must however be regarded as settled beyond the slight-

fringing upon the exercise of similar rights by others. He who wilfully interferes with them must justify his conduct.[5]

5. It is a justification for one who does so interfere with one of these rights to show that the act was done in the exercise, in a lawful manner, of the right of competition.[6]

6. It is not necessarily lawful for a number to combine to do an act, *e.g.*,

[1] *In re* Debs, 15 Sup. Ct. Rep. 900.
[2] Plant *v.* Woods, 176 Mass. 492; Pickett *v.* Walsh, 192 Mass. 572.
[3] Vegelahn *v.* Guntner, 167 Mass. 92; L. D. Willcutt & Sons Co. *v.* Driscoll, 200 Mass. 110.
[4] Moran *v.* Dunphy, 177 Mass. 488; Berry *v.* Donovan, 188 Mass. 353.
[5] Walker *v.* Cronin, 107 Mass. 555; Plant *v.* Woods, *ubi supra.*
[6] Bowen *v.* Matheson, 14 Allen, 499; Pickett *v.* Walsh, 192 Mass. 572.

for violating an injunction of which he does not know. And it is very doubtful if an injunction, in this Commonwealth at least, can be issued so as to bind persons who in some proper way have not been made defendants in the bill of complaint or who have had no opportunity to have their interests looked out for before the court.

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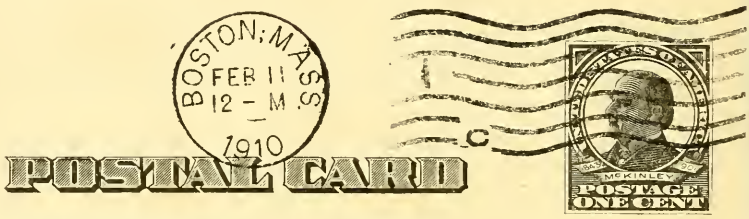

siders the action or probable action of any of the criminal courts in cases where the violation of the injunction happens also to be a crime.

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The most conspicuous instance of the employment of the injunction to restrain acts of labor organizations and of strikers was in the great railway strike at Chicago in 1894, and it was in the decision of the Debs' case[1] arising out of that strike that the highest judicial authority in the United States was given for the use of the injunction under such circumstances.

While the decisions of all the appellate courts of the various States, the Federal courts, and of the other tribunals which administer the English law are important to us of Massachusetts in that they may influence the decision of our own courts at least in cases which have not arisen here before, only the decisions of the Supreme Judicial Court of Massachusetts are precedents which are binding upon Massachusetts courts when confronted with similar states of facts. These decisions, as far as they relate to the matters under investigation, have been collected and are printed herewith.

Reference to these decisions will enable the inquirer to determine in what manner our courts have treated these matters as they have come before them and what has been declared to be and must be regarded as the Massachusetts law. It is not the present purpose to endeavor to state fully the legal situation. As to that, the decisions and court records which are printed as part of this report speak for themselves.

2. FUNDAMENTAL PRINCIPLES.

A few fundamental although somewhat abstract principles must however be regarded as settled beyond the slightest question, and a statement of them may be helpful to non-professional readers particularly in attempting to make up their minds as to matters which lie in the region which still may be regarded as debatable. These are that:

1. Every man has a right to work for whom he pleases, on such terms as he wishes or is able to make, and with such fellow workmen as he chooses.[2]

2. Every man has a right to hire whom he will on such terms as he can make and to have the flow of labor to him uninterrupted.[3]

3. Every man has a right to be free from interference or molestation in the conduct of his business or the pursuit of his means of livelihood.[4]

4. These recognized rights of every individual will be protected by the law so far as they may be without infringing upon the exercise of similar rights by others. He who wilfully interferes with them must justify his conduct.[5]

5. It is a justification for one who does so interfere with one of these rights to show that the act was done in the exercise, in a lawful manner, of the right of competition.[6]

6. It is not necessarily lawful for a number to combine to do an act, *e.g.*,

[1] *In re* Debs, 15 Sup. Ct. Rep. 900.
[2] Plant *v.* Woods, 176 Mass. 492; Pickett *v.* Walsh, 192 Mass. 572.
[3] Vegelahn *v.* Guntner, 167 Mass. 92; L. D. Willcutt & Sons Co. *v.* Driscoll, 200 Mass. 110.
[4] Moran *v.* Dunphy, 177 Mass. 488; Berry *v.* Donovan, 188 Mass. 353.
[5] Walker *v.* Cronin, 107 Mass. 555; Plant *v.* Woods, *ubi supra.*
[6] Bowen *v.* Matheson, 14 Allen, 499; Pickett *v.* Walsh, 192 Mass. 572.

to refuse to work for or trade with a given man, which a single individual lawfully might do.[1]

7. An unlawful conspiracy is a combination of two or more persons to accomplish an unlawful purpose, or to accomplish a lawful purpose by the use of unlawful means.[2]

8. A labor union formed to regulate the conduct of its members and to bring about their united action for the purpose of improving the conditions under which they work is not an unlawful combination.[3]

9. Concerted action by the members of a labor union, *e.g.,* a strike, which results in interference with the rights of others to employ or to be employed, may be lawful or it may be unlawful.[4]

10. Where persons are under a formal contract to work for a fixed period it is unlawful to induce or to attempt to induce the breaking of such a contract by any means of persuasion, peaceable or otherwise; and this is true whether the attempt is made by an individual or by a combination of individuals.[5]

11. Where persons are under a formal contract to work a strike to secure something not due under the contract is unlawful.[6]

12. Competition is not a justification for interference with rights under a formal contract.[7]

13. Where there is not such a formal contract, but either party is free to terminate the relation of employer and employed at will, whether a strike is lawful or unlawful depends upon whether it fairly can be said to be within the limit of allowable competition.[8]

14. Primarily the legality of a strike depends upon its purpose.[9]

15. A strike is lawful only when it is against an employer with whom the striking workmen have a direct trade dispute with regard to wages, the hours of labor or the like, and is brought about for the purpose of obtaining from that employer a betterment of such conditions.[10]

16. Where a strike is unlawful the use of any means of carrying it on is unlawful however innocent such means may be in themselves.[11]

17. Even when a strike is lawful it may not be carried on by the use of means that are unlawful.[12]

18. A court of equity will never compel any man to work against his will.[13]

19. But where it is shown that an unlawful strike is in progress a court of equity will, the other necessary elements being present, forbid the doing of any acts in aid of it; and if a lawful strike is being carried on by unlawful means it will forbid the acts which make those means effective.[14]

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[1] Martell *v.* White, 185 Mass. 255; Pickett *v.* Walsh, 192 Mass. 572.

[2] Commonwealth *v.* Hunt, 4 Met. 111; Carew *v.* Rutherford, 106 Mass. 1.

[3] Snow *v.* Wheeler, 113 Mass. 179.

[4] Carew *v.* Rutherford, 106 Mass. 1; Pickett *v.* Walsh, 192 Mass. 572.

[5] Walker *v.* Cronin, 107 Mass. 555; Beekman *v.* Marsters, 195 Mass. 205; Reynolds *v.* Davis, 198 Mass. 294.

[6] Reynolds *v.* Davis, 198 Mass. 294.

[7] Beekman *v.* Marsters, 195 Mass. 205.

[8] Reynolds *v.* Davis, *ubi supra.*

[9] L. D. Willcutt & Sons Co. *v.* Driscoll, *ubi supra.*

[10] Pickett *v.* Walsh, 192 Mass. 572. A sympathetic strike of whatever nature, a strike for a closed, or union shop so-called, or to compel the employer to coerce non-union employees to join a union, are examples of strikes which have been declared to be unlawful.

[11] Reynolds *v.* Davis, 198 Mass. 294.

[12] What means of carrying on a strike are unlawful cannot be said to be completely defined. Physical violence, the threat thereof, and anything which amounts to a breach of the peace or other crime, is certainly so. Examples of what has been determined to be unlawful intimidation or conduct otherwise unlawful may be found in the decisions printed herein.

[13] Rice *v.* D'Arville, 162 Mass. 559.

[14] Cases cited *supra.*

3. THE DECISIONS OF THE SUPREME JUDICIAL COURT.

Search has been made of the Massachusetts Reports, and this collection of decisions bearing directly upon questions arising in labor disputes, or having intimate connection with such questions, is believed to be complete, but a few cases cited by the courts in some of the cases decided, as authority for some particular point, have been omitted as bearing too remotely upon the general question to be helpful. Lack of space has compelled the omission of the headnotes as given in the official reports, and, in some instances, the reporter's statements of facts have been omitted or abridged.

The decisions themselves are here printed in full. Dissenting opinions, of which there have been several, have been noticed, but have been omitted. Many of them are instructive and important, but, since it is the majority opinion which states the interpretation of the law as it must stand, it seems wise, in order to avoid possible confusion, to print it only.

COMMONWEALTH *v.* JOHN HUNT *et als.*

SUFFOLK. 1842.

4 Metcalf, 111.

Indictment for criminal conspiracy in forming an association and agreeing not to work for an employer who should employ workmen not members of the association, held not to warrant conviction.

The indictment set forth that defendants did unlawfully conspire together to injure certain persons named by uniting in an unlawful combination and in making for it unlawful by-laws whereby they agreed to refuse to work for an employer who should employ any workmen who were not members of the association, after notice given him to discharge such workmen. The name of the association was "The Boston Journeymen Bootmakers' Society." The defendants were found guilty in the lower courts and the case came up upon the refusal of the trial judge to rule that the agreement set forth in the indictment did not constitute a criminal conspiracy, and to his ruling that the society organized and for the purpose described in the indictment was an unlawful conspiracy.

Rantoul, for the defendants.

Austin, Attorney General, for the Commonwealth.

SHAW, C.J. Considerable time has elapsed since the argument of this case. It has been retained long under advisement, partly because we were desirous of examining, with some attention, the great number of cases cited at the argument, and others which have presented themselves in course, and partly because we considered it a question of great importance to the Commonwealth, and one which had been much examined and considered by the learned judge of the municipal court.

We have no doubt that, by the operation of the constitution of this Commonwealth, the general rules of the common law, making conspiracy an indictable offence, are in force here, and that this is included in the description of laws which had, before the adoption of the constitution, been used and approved in the Province, Colony, or State of Massachusetts Bay, and usually practised in the courts of law. Const. of Mass. c. VI., § 6. It was so held in *Commonwealth* v. *Boynton,* and *Commonwealth* v. *Pierpont,* cases decided before reports of cases were regularly published, and in many cases since. *Commonwealth* v. *Ward,* 1 Mass. 473, *Commonwealth* v. *Judd* and *Commonwealth* v. *Tibbetts,* 2 Mass. 329, 536. *Commonwealth* v. *Warren,* 6 Mass. 74. Still, it is proper in this connection to remark, that although the common law in regard to conspiracy in this Commonwealth is in force, yet it will not necessarily follow that every indictment at common law for this offence is a

precedent for a similar indictment in this State. The general rule of the common law is, that it is a criminal and indictable offence, for two or more to confederate and combine together, by concerted means, to do that which is unlawful or criminal, to the injury of the public, or portions or classes of the community, or even to the rights of an individual. This rule of law may be equally in force as a rule of the common law, in England and in this Commonwealth; and yet it must depend upon the local laws of each country to determine, whether the purpose to be accomplished by the combination, or the concerted means of accomplishing it, be unlawful or criminal in the respective countries. All those laws of the parent country, whether rules of the common law, or early English statutes, which were made for the purpose of regulating the wages of laborers, the settlement of paupers, and making it penal for any one to use a trade or handicraft to which he had not served a full apprenticeship — not being adapted to the circumstances of our colonial condition — were not adopted, used or approved, and therefore do not come within the description of the laws adopted and confirmed by the provision of the constitution already cited. This consideration will do something towards reconciling the English and American cases, and may indicate how far the principles of the English cases will apply in this Commonwealth, and show why a conviction in England, in many cases, would not be a precedent for a like conviction here. *The King* v. *Journeymen Tailors of Cambridge,* 8 Mod. 10, for instance, is commonly cited as an authority for an indictment at common law, and a conviction of journeymen mechanics of a conspiracy to raise their wages. It was there held, that the indictment need not conclude *contra formam statuti,* because the gist of the offence was the conspiracy, which was an offence at common law. At the same time it was conceded, that the unlawful object to be accomplished was the raising of wages above the rate fixed by a general act of parliament. It was therefore a conspiracy to violate a general statute law, made for the regulation of a large branch of trade, affecting the comfort and interest of the public; and thus the object to be accomplished by the conspiracy was unlawful, if not criminal.

But the rule of law, that an illegal conspiracy, whatever may be the facts which constitute it, is an offence punishable by the laws of this Commonwealth, is established as well by legislative as by judicial authority. Like many other cases, that of murder, for instance, it leaves the definition or description of the offence to the common law, and provides modes for its prosecution and punishment. The Revised Statutes, c. 82, § 28, and c. 86, § 10, allowed an appeal from the court of common pleas and the municipal court, respectively, in cases of a conviction for conspiracy, and thereby recognized it as one of the class of offences, so difficult of investigation, or so aggravated in their nature and punishment, as to render it fit that that party accused should have the benefit of a trial before the highest court of the Commonwealth. And though this right of appeal is since taken away, by St. 1840, c. 87, § 4, this does not diminish the force of the evidence tending to show that the offence is known and recognized by the legislature as a high indictable offence.

But the great difficulty is, in framing any definition or description, to be drawn from the decided cases, which shall specifically identify this offence — a description broad enough to include all cases punishable under this description, without including acts which are not punishable. Without attempting to review and reconcile all the cases, we are of opinion, that as a general description, though perhaps not a precise and accurate definition, a conspiracy must be a combination of two or more persons, by

some concerted action, to accomplish some criminal or unlawful purpose, or to accomplish some purpose, not in itself criminal or unlawful, by criminal or unlawful means. We use the terms criminal or unlawful, because it is manifest that many acts are unlawful, which are not punishable by indictment or other public prosecution; and yet there is no doubt, we think, that a combination by numbers to do them would be an unlawful conspiracy, and punishable by indictment. Of this character was a conspiracy to cheat by false pretences, without false tokens, when a cheat by false pretences only, by a single person, was not a punishable offence. *Commonwealth* v. *Boynton,* before referred to. So a combination to destroy the reputation of an individual, by verbal calumny which is not indictable. So a conspiracy to induce and persuade a young female, by false representations, to leave the protection of her parent's house, with a view to facilitate her prostitution. *Rex* v. *Lord Grey,* 3 Hargrave's State Trials, 519.

But yet it is clear, that it is not every combination to do unlawful acts, to the prejudice of another by a concerted action, which is punishable as conspiracy. Such was the case of *The King* v. *Turner,* 13 East, 228, which was a combination to commit a trespass on the land of another, though alleged to be with force, and by striking terror by carrying offensive weapons in the night. The conclusion to which Mr. Chitty comes, in his elaborate work on Criminal Law, Vol. III, p. 1140, after an enumeration of the leading authorities, is, that "we can rest, therefore, only on the individual cases decided, which depend, in general, on particular circumstances, and which are not to be extended."

The American cases are not much more satisfactory. The leading one is that of *Lambert* v. *People of New York,* 9 Cow. 578. On the principal point, the court of errors were equally divided, and the case was decided in favor of the plaintiff in error, who had been convicted before the supreme court, by the casting vote of the president. The principal question was, whether an indictment, charging that several persons, intending unlawfully, by indirect means, to cheat and defraud an incorporated company, and divers others unknown, of their effects, did fraudulently and unlawfully conspire together, injuriously and unjustly, by wrongful and indirect means, to cheat and defraud the company and others of divers effects, and that, in execution thereof, they did, by certain undue, indirect and unlawful means, cheat and defraud the company, etc., was a good and valid indictment. As two distinguished senators, and members of the court of errors, took different sides of this question, the subject was fully and elaborately discussed; the authorities were all reviewed; and the case may be referred to, as a full and able exposition of the learning on the subject.

Let us, then, first consider how the subject of criminal conspiracy is treated by elementary writers. The position cited by Chitty from Hawkins, by way of summing up the result of the cases, is this: "In a word, all confederacies wrongfully to prejudice another are misdemeanors at common law, whether the intention is to injure his property, his person, or his character." And Chitty adds, that "the object of conspiracy is not confined to an immediate wrong to individuals; it may be to injure public trade, to affect public health, to violate public police, to insult public justice, or to do any act in itself illegal." 3 Chit. Crim. Law, 1139.

Several rules upon the subject seem to be well established, to wit, that the unlawful agreement constitutes the gist of the offence, and therefore that it is not necessary to charge the execution of the unlawful agreement. *Commonwealth* v. *Judd,* 2 Mass. 337. And when such execution is charged, it is to be

regarded as proof of the intent, or as an aggregation of the criminality of the unlawful combination.

Another rule is a necessary consequence of the former, which is, that the crime is consummate and complete by the fact of unlawful combination, and, therefore, that if the execution of the unlawful purpose is averred, it is by way of aggravation, and proof of it is not necessary to conviction; and therefore the jury may find the conspiracy, and negative the execution, and it will be a good conviction.

And it follows, as another necessary legal consequence, from the same principle, that the indictment must — by averring the unlawful purpose of the conspiracy, or the unlawful means by which it is contemplated and agreed to accomplish a lawful purpose, or a purpose not of itself criminally punishable — set out an offence complete in itself, without the aid of any averment of illegal acts done in pursuance of such an agreement; and that an illegal combination, imperfectly and insufficiently set out in the indictment, will not be aided by averments of acts done in pursuance of it.

From this view of the law respecting conspiracy, we think it an offence which especially demands the application of that wise and humane rule of the common law, that an indictment shall state, with as much certainty as the nature of the case will admit, the facts which constitute the crime intended to be charged. This is required, to enable the defendant to meet the charge and prepare for his defence, and, in case of acquittal or conviction, to show by the record the identity of the charge, so that he may not be indicted a second time for the same offence. It is also necessary, in order that a person, charged by the grand jury for one offence, may not substantially be convicted, on his trial, of another. This fundamental rule is confirmed by the Declaration of Rights, which declares that no subject shall be held to answer for any crime or offence, until the same is fully and plainly, substantially and formally described to him.

From these views of the rules of criminal pleading, it appears to us to follow, as a necessary legal conclusion, that when the criminality of a conspiracy consists in an unlawful agreement of two or more persons to compass or promote some criminal or illegal purpose, that purpose must be fully and clearly stated in the indictment; and if the criminality of the offence, which is intended to be charged, consists in the agreement to compass or promote some purpose, not of itself criminal or unlawful, by the use of fraud, force, falsehood, or other criminal or unlawful means, such intended use of fraud, force, falsehood, or other criminal or unlawful means, must be set out in the indictment. Such, we think, is, on the whole, the result of the English authorities, although they are not quite uniform. 1 East. P. C. 461. 1 Stark. Crim. Pl. (2d ed.) 156. *Opinion of Spencer, Senator,* 9 Cow. 586, and *seq.*

In the case of a conspiracy to induce a person to marry a pauper, in order to change the burden of her support from one parish to another, it was held by Buller, J., that, as the marriage itself was not unlawful, some violence, fraud or falsehood, or some artful or sinister contrivance must be averred, as the means intended to be employed to effect the marriage, in order to make the agreement indictable as a conspiracy, *Rex* v. *Fowler,* 2 Russell on Crimes (1st ed.), 1812. S. C. 1 East. P. C. 461.

Perhaps the cases of *The King* v. *Eccles,* 3 Doug. 337, and *The King* v. *Gill,* 2 Barn. & Ald. 204, cited and relied on as having a contrary tendency, may be reconciled with the current of cases, and the principle on which they are founded, by the fact, that the court did not consider that the indictment set forth a criminal, or at least an unlawful purpose, and so rendered it unnecessary to

set forth the means; because a confederacy to accomplish such purpose, by any means, must be considered an indictable conspiracy, and so the averment of any intended means was not necessary.

With these general views of the law, it becomes necessary to consider the circumstances of the present case, as they appear from the indictment itself, and from the bill of exceptions filed and allowed.

One of the exceptions, though not the first in the order of time, yet by far the most important, was this:

The counsel for the defendants contended, and requested the court to instruct the jury, that the indictment did not set forth any agreement to do a criminal act, or to do any lawful act by any specified criminal means, and that the agreements therein set forth did not constitute a conspiracy indictable by any law of this Commonwealth. But the judge refused so to do, and instructed the jury, that the indictment did, in his opinion, describe a confederacy among the defendants to do an unlawful act, and to effect the same by unlawful means; that the society, organized and associated for the purposes described in the indictment, was an unlawful conspiracy, against the laws of this Commonwealth; and that if the jury believed, from the evidence in the case, that the defendants, or any of them, had engaged in such a confederacy, they were bound to find such of them guilty.

We are here carefully to distinguish between the confederacy set forth in the indictment, and the confederacy or association contained in the constitution of the Boston Journeymen Bootmakers' Society, as stated in the little printed book, which was admitted as evidence on the trial. Because, though it was thus admitted as evidence, it would not warrant a conviction for anything not stated in the indictment. It was proof, as far as it went, to support the averments in the indictment. If it contained any criminal matter not set forth in the indictment, it is of no avail. The question then presents itself in the same form as on a motion in arrest of judgment.

The first count set forth, that the defendants, with divers others unknown, on the day and at the place named, being workmen, and journeymen, in the art and occupation of bootmakers, unlawfully, perniciously and deceitfully designing and intending to continue, keep up, form, and unite themselves, into an unlawful club, society and combination, and make unlawful by-laws, rules and orders among themselves, and thereby govern themselves and other workmen, in the said art, and unlawfully and unjustly to extort great sums of money by means thereof, did unlawfully assemble and meet together, and being so assembled, did unjustly and corruptly conspire, combine, confederate and agree together, that none of them should thereafter, and that none of them would, work for any master or person whatsoever, in the said art, mystery and occupation, who should employ any workmen or journeyman, or other person, in the said art, who was not a member of said club, society or combination, after notice given him to discharge such workman from the employ of such master; to the great damage and oppression, etc.

Now it is to be considered that the preamble and introductory matter in the indictment — such as unlawfully and deceitfully designing and intending unjustly to extort great sums, etc. — is mere recital, and not traversable, and therefore cannot aid an imperfect averment of the facts constituting the description of the offence. The same may be said of the concluding matter, which follows the averment, as to the great damage and oppression not only of their said masters, employing them in said art and occupation, but also of divers other workmen in the same art, mystery and occupation, to the evil example, etc. If the facts averred constitute the crime, these are properly stated as the legal inferences to be

drawn from them. If they do not constitute the charge of such an offence, they cannot be aided by these alleged consequences.

Stripped then of these introductory recitals and alleged injurious consequences, and of the qualifying epithets attached to the facts, the averment is this; that the defendants and others formed themselves into a society, and agreed not to work for any person, who should employ any journeymen or other person, not a member of such society, after notice given him to discharge such workman.

The manifest intent of the association is, to induce all those engaged in the same occupation to become members of it. Such a purpose is not unlawful. It would give them a power which might be exerted for useful and honorable purposes, or for dangerous and pernicious ones. If the latter were the real and actual object, and susceptible of proof, it should have been specially charged. Such an association might be used to afford each other assistance in times of poverty, sickness and distress; or to raise their intellectual, moral and social condition; or to make improvement in their art; or for other proper purposes. Or the association might be designed for purposes of oppression and injustice. But in order to charge all those, who become members of an association, with the guilt of a criminal conspiracy, it must be averred and proved that the actual, if not the avowed object of the association, was criminal. An association may be formed, the declared objects of which are innocent and laudable, and yet they may have secret articles, or an agreement communicated only to the members, by which they are banded together for purposes injurious to the peace of society or the rights of its members. Such would undoubtedly be a criminal conspiracy, on proof of the fact, however meritorious and praiseworthy the declared objects might be. The law is not to be hoodwinked by colorable pretences. It looks at truth and reality, through whatever disguise it may assume. But to make such an association, ostensibly innocent, the subject of prosecution as a criminal conspiracy, the secret agreement, which makes it so, is to be averred and proved as the gist of the offence. But when an association is formed for purposes actually innocent, and afterwards its powers are abused, by those who have the control and management of it, to purposes of oppression and injustice, it will be criminal in those who thus misuse it, or give consent thereto, but not in the other members of the association. In this case, no such secret agreement, varying the objects of the association from those avowed, is set forth in this count of the indictment.

Nor can we perceive that the objects of this association, whatever they may have been, were to be attained by criminal means. The means which they proposed to employ, as averred in this count, and which, as we are now to presume, were established by the proof, were, that they would not work for a person, who, after due notice, should employ a journeyman not a member of their society. Supposing the object of the association to be laudable and lawful, or at least not unlawful, are these means criminal? The case supposes that these persons are not bound by contract, but free to work for whom they please, or not to work, if they so prefer. In this state of things, we cannot perceive, that it is criminal for men to agree together to exercise their own acknowledged rights, in such a manner as best to subserve their own interests. One way to test this is, to consider the effect of such an agreement, where the object of the association is acknowledged on all hands to be a laudable one. Suppose a class of workmen, impressed with the manifold evils of intemperance, should agree with each other not to work in a shop in which ardent spirit was furnished, or not to work in a shop with

any one who used it, or not to work for an employer, who should, after notice, employ a journeyman who habitually used it. The consequences might be the same. A workman, who should still persist in the use of ardent spirit, would find it more difficult to get employment; a master employing such an one might, at times, experience inconvenience in his work, in losing the services of a skilful but intemperate workman. Still it seems to us, that as the object would be lawful, and the means not unlawful, such an agreement could not be pronounced a criminal conspiracy.

From this count in the indictment, we do not understand that the agreement was, that the defendants would refuse to work for an employer, to whom they were bound by contract for a certain time, in violation of that contract; nor that they would insist that an employer should discharge a workman engaged by contract for a certain time, in violation of such contract. It is perfectly consistent with every thing stated in this count, that the effect of the agreement was, that when they were free to act, they would not engage with an employer, or continue in his employment, if such employer, when free to act, should engage with a workman, or continue a workman in his employment, not a member of the association. If a large number of men, engaged for a certain time, should combine together to violate their contract, and quit their employment together, it would present a very different question. Suppose a farmer, employing a large number of men, engaged for the year, at fair monthly wages, and suppose that just at the moment that his crops were ready to harvest, they should all combine to quit his service, unless he would advance their wages, at a time when other laborers could not be obtained. It would surely be a conspiracy to do an unlawful act, though of such a character, that if done by an individual, it would lay the foundation of a civil action only, and not of a criminal prosecution. It would be a case very different from that stated in this count.

The second count, omitting the recital of unlawful intent and evil disposition, and omitting the direct averment of an unlawful club or society, alleges that the defendants, with others unknown, did assemble, conspire, confederate and agree together, not to work for any master or person who should employ any workman not being a member of a certain club, society or combination, called the Boston Journeymen Bootmaker's Society, or who should break any of their by-laws, unless such workmen should pay to said club, such sum as should be agreed upon as a penalty for the breach of such unlawful rules, etc.; and that by means of said conspiracy they did compel one Isaac B. Wait, a master cordwainer, to turn out of his employ one Jeremiah Horne, a journeyman bootmaker, etc., in evil example, etc. So far as the averment of a conspiracy is concerned, all the remarks made in reference to the first count are equally applicable to this. It is simply an averment of an agreement amongst themselves not to work for a person, who should employ any person not a member of a certain association. It sets forth no illegal or criminal purpose to be accomplished, nor any illegal or criminal means to be adopted for the accomplishment of any purpose. It was an agreement, as to the manner in which they would exercise an acknowledged right to contract with others for their labor. It does not aver a conspiracy or even an intention to raise their wages; and it appears by the bill of exceptions, that the case was not put upon the footing of a conspiracy to raise their wages. Such an agreement, as set forth in this count, would be perfectly justifiable under the recent English statute, by which this subject is regulated. St. 6 Geo. IV. c. 129. See Roscoe Crim. Ev. (2d Amer. ed.) 368, 369.

As to the latter part of this count, which avers that by means of said con-

spiracy, the defendants did compel one Wait to turn out of his employ one Jeremiah Horne, we remark, in the first place, that as the acts done in pursuance of a conspiracy, as we have before seen, are stated by way of aggravation, and not as a substantive charge; if no criminal or unlawful conspiracy is stated, it cannot be aided and made good by mere matter of aggravation. If the principal charge falls, the aggravation falls with it. *State* v. *Rickey,* 4 Halst. 293.

But further; if this is to be considered as a substantive charge, it would depend altogether upon the force of the word "compel," which may be used in the sense of coercion, or duress, by force or fraud. It would therefore depend upon the context and the connection with other words, to determine the sense in which it was used in the indictment. If, for instance, the indictment had averred a conspiracy, by the defendants, to compel Wait to turn Horne out of his employment, and to accomplish that object by the use of force or fraud, it would have been a very different case; especially if it might be fairly construed, as perhaps in that case it might have been, that Wait was under obligation, by contract, for an unexpired term of time, to employ and pay Horne. As before remarked, it would have been a conspiracy to do an unlawful, though not a criminal act, to induce Wait to violate his engagement, to the actual injury of Horne. To mark the difference between the case of a journeyman or a servant and master, mutually bound by contract, and the same parties when free to engage anew, I should have before cited the case of the *Boston Glass Co.* v. *Binney,* 4 Pick. 425. In that case, it was held actionable to entice another person's hired servant to quit his employment, during the time for which he was engaged; but not actionable to treat with such hired servant, whilst actually hired and employed by another, to leave his service, and engage in the employment of the person making the proposal, when the term for which he is engaged shall expire. It acknowledges the established principle, that every free man, whether skilled laborer, mechanic, farmer or domestic servant, may work or not work, or work or refuse to work with any company or individual, at his own option, except so far as he is bound by contract. But whatever might be the force of the word "compel," unexplained by its connection, it is disarmed and rendered harmless by the precise statement of the means, by which such compulsion was to be effected. It was the agreement not to work for him, by which they compelled Wait to decline employing Horne longer. On both of these grounds, we are of opinion that the statement made in this second count, that the unlawful agreement was carried into execution, makes no essential difference between this and the first count.

The third count, reciting a wicked and unlawful intent to impoverish one Jeremiah Horne, and hinder him from following his trade as a bootmaker, charges the defendants, with others unknown, with an unlawful conspiracy, by wrongful and indirect means, to impoverish said Horne and to deprive and hinder him from his said art and trade and getting his support thereby, and that, in pursuance of said unlawful combination, they did unlawfully and indirectly hinder and prevent, etc., and greatly impoverish him.

If the fact of depriving Jeremiah Horne of the profits of his business, by whatever means it might be done, would be unlawful and criminal, a combination to compass that object would be an unlawful conspiracy, and it would be unnecessary to state the means. Such seems to have been the view of the court in *The King* v. *Eccles,* 3 Doug. 337, though the case is so briefly reported, that the reasons, on which it rests, are not very obvious. The case seems to have gone on the ground, that the means

were matter of evidence, and not of averment; and that after verdict, it was to be presumed, that the means contemplated and used were such as to render the combination unlawful and constitute a conspiracy.

Suppose a baker in a small village had the exclusive custom of his neighborhood, and was making large profits by the sale of his bread. Supposing a number of those neighbors, believing the price of his bread too high, should propose to him to reduce his prices, or if he did not, that they would introduce another baker; and on his refusal, such other baker should, under their encouragement, set up a rival establishment, and sell his bread at lower prices; the effect would be to diminish the profit of the former baker, and to the same extent to impoverish him. And it might be said and proved, that the purpose of the associates was to diminish his profits, and thus impoverish him, though the ultimate and laudable object of the combination was to reduce the cost of bread to themselves and their neighbors. The same thing may be said of all competition in every branch of trade and industry; and yet it is through that competition, that the best interests of trade and industry are promoted. It is scarcely necessary to allude to the familiar instances of opposition lines of conveyance, rival hotels, and the thousand other instances, where each strives to gain custom to himself, by ingenious improvements, by increased industry, and by all the means by which he may lessen the price of commodities, and thereby diminish the profits of others.

We think, therefore, that associations may be entered into, the object of which is to adopt measures that may have a tendency to impoverish another, that is, to diminish his gains and profits, and yet so far from being criminal or unlawful, the object may be highly meritorious and public spirited. The legality of such an association will therefore depend upon the means to be used for its accomplishment. If it is to be carried into effect by fair or honorable and lawful means, it is, to say the least, innocent; if by falsehood or force, it may be stamped with the character of conspiracy. It follows as a necessary consequence, that if criminal and indictable, it is so by reason of the criminal means intended to be employed for its accomplishment; and as a further legal consequence, that as the criminality will depend on the means, those means must be stated in the indictment. If the same rule were to prevail in criminal, which holds in civil proceedings — that a case defectively stated may be aided by a verdict — then a court might presume, after verdict, that the indictment was supported by proof of criminal or unlawful means to effect the object. But it is an established rule in criminal cases, that the indictment must state a complete indictable offence, and cannot be aided by the proof offered at the trial.

The fourth count avers a conspiracy to impoverish Jeremiah Horne, without stating any means; and the fifth alleges a conspiracy to impoverish employers, by preventing and hindering them from employing persons, not members of the Bootmakers' Society; and these require no remarks, which have not been already made in reference to the other counts.

One case was cited, which was supposed to be much in point, and which is certainly deserving of great respect. *The People* v. *Fisher,* 14 Wend. 1. But it is obvious, that this decision was founded on the construction of the revised statutes of New York, by which this matter of conspiracy is now regulated. It was a conspiracy by journeymen to raise their wages, and it was decided to be a violation of the statutes, making it criminal to commit any act injurious to trade or commerce. It has, therefore, an indirect application only to the present case.

A caution on this subject, suggested

by the commissioners for revising the statutes of New York, is entitled to great consideration. They are alluding to the question, whether the law of conspiracy should be so extended, as to embrace every case where two or more unite in some fraudulent measure to injure an individual, by means not in themselves criminal. "The great difficulty," say they, "in enlarging the definition of this offence, consists in the inevitable result of depriving the courts of equity of the most effectual means of detecting fraud, by compelling a discovery on oath. It is a sound principle of our institutions, that no man shall be compelled to accuse himself of any crime; which ought not to be violated in any case. Yet such must be the result, or the ordinary jurisdiction of courts of equity must be destroyed, by declaring any private fraud, when committed by two, or any concert to commit it, criminal." 9 Cow. 625. In New Jersey, in a case which was much considered, it was held that an indictment will not lie for a conspiracy to commit a civil injury. *State* v. *Rickey,* 4 Halst. 293. And such seemed to be the opinion of Lord Ellenborough, in *The King* v. *Turner,* 13 East. 231, in which he considered that the case of *The King* v. *Eccles,* 3 Doug. 337, though in form an indictment for a conspiracy to prevent an individual from carrying on his trade, yet in substance was an indictment for a conspiracy in restraint of trade, affecting the public.

It appears by the bill of exceptions, that it was contended on the part of the defendants, that this indictment did not set forth any agreement to do a criminal act, or to do any lawful act by criminal means, and that the agreement therein set forth did not constitute a conspiracy indictable by the law of this State, and that the court was requested so to instruct the jury. This the court declined doing, but instructed the jury that the indictment did describe a confederacy among the defendants to do an unlawful act, and to effect the same by unlawful means — that the society, organized and associated for the purposes described in the indictment, was an unlawful conspiracy against the laws of this State, and that if the jury believed, from the evidence, that the defendants or any of them had engaged in such confederacy, they were bound to find such of them guilty.

In this opinion of the learned judge, this court, for the reasons stated, cannot concur. Whatever illegal purpose can be found in the constitution of the Bootmakers' Society, it not being clearly set forth in the indictment, cannot be relied upon to support this conviction. So if any facts were disclosed at the trial, which, if properly averred, would have given a different character to the indictment, they do not appear in the bill of exceptions, nor could they, after verdict, aid the indictment. But looking solely at the indictment, disregarding the qualifying epithets, recitals and immaterial allegations, and confining ourselves to facts so averred as to be capable of being traversed and put in issue, we cannot perceive that it charges a criminal conspiracy punishable by law. The exceptions must, therefore, be sustained, and the judgment arrested.

Several other exceptions were taken and have been argued; but this decision on the main question has rendered it unnecessary to consider them.

JOHN BOWEN *v.* MURDOCH MATHESON *et als.*

SUFFOLK. 1867.

14 Allen, 499.

Combination of shipping masters to control the business of shipping seamen by preventing boarders in houses conducted by members of the association from shipping in any vessel where any of the crew were shipped from houses not controlled by members of the association declared not unlawful.

CHAPMAN, J. The gist of the plaintiff's action is not the conspiracy alleged

in the declaration, but the damage done to the plaintiff by the alleged acts of the defendants; and the averment that the acts were done in pursuance of a conspiracy does not change the nature of the action. *Parker* v. *Huntington,* 2 Gray, 124. In order to be good, the declaration must allege against the defendants the commission of illegal acts. Its allegations must be analyzed, to ascertain whether they contain a sufficient statement of such acts.

The first allegation as to what they did is very loose and general, namely, that, in pursuance of their conspiracy as aforesaid, they did each and every of the above acts and things against the plaintiff. Then follows an enumeration of the acts. (1) "Did take their men out of ships because the plaintiff's men were in the same." We cannot see that this act is in itself unlawful. It does not appear that they were under any obligation to keep their men on board the same ship with the plaintiff's men, or violated the rights of the plaintiff or of any other person in taking them out. (2) "Did refuse to furnish and ship men to him." Such refusal is lawful in the absence of any legal obligation to furnish and ship men to him, and no such obligation is stated. (3) "Did prevent men from shipping with him." This might be done in many ways which are lawful and proper, and as no illegal methods are stated the allegation is bad. (4) "Did notify the public that they had laid him on the shelf." In another part of the declaration this is alleged to mean that the defendants "were acting against him as aforesaid." It does not appear to be slanderous, and therefore is not actionable. (5) "Did publicly notify his customers and friends that he could not ship seamen for them." This is not actionable, because it does not appear that he had a right to ship seamen for them. (6) "Did interfere with his business as aforesaid; did prevent his getting seamen to ship; did prevent his getting employ as shipping-master; and did break up the plaintiff in his business and calling by their conspiracy, acts and doings, as aforesaid, and compel him to abandon his said business." All this adds nothing to the substantial allegations of acts done by the defendants, but is to be regarded as alleging the consequences of the acts before alleged.

If we look at the allegations of acts done in connection with the intent set forth, we must look into the rules and regulations referred to, a copy of which is annexed to the declaration. They are entitled "Constitution and By-laws of the Seamen's Mutual Benefit Association of the City of Boston." No person can be a member who does not keep a regular seamen's boarding-house. Members are forbidden to ship seamen for less than certain specified rates of wages. They are to use their best endeavors to prevent their boarders from shipping in any vessel when any of the crew are shipped from boarding-houses that are not in good standing with the association. Other articles relate to the duties of the members toward each other, in endeavoring to secure payment of board-bills, and not taking advantage of each other. We can see nothing criminal in any of these stipulations; see *Commonwealth* v. *Hunt,* 4 Met. 111; and nothing illegal. If their effect is to destroy the business of shipping-masters who are not members of the association, it is such a result as in the competition of business often follows from a course of proceeding that the law permits. New inventions and new methods of transacting business often destroy the business of those who adhere to old methods. Sometimes associations break down the business of individuals, and sometimes an individual is able to destroy the business of associated men. It would be nothing novel if the plaintiff in the exercise of his ingenuity should in his turn adopt some improvement that shall compel the defendants to dissolve their connection. As the declaration sets forth no illegal acts on the part of the

defendants, the demurrer must be sustained.

H. W. Paine & N. St. J. Green, for the defendants.

F. W. Sawyer, for the plaintiff.

JOHN CAREW *v.* ALEXANDER RUTHERFORD *et als.*

SUFFOLK. 1870.

106 Mass. 1.

Calling of strike by Stone Cutters Association in order to force master mechanic to pay "fine" declared unlawful and recovery of money so paid allowed.

CHAPMAN, C.J. The declaration contains a count in tort, and a count for money had and received. The count in tort alleges, in substance, that the plaintiff was engaged in carrying on the business of cutting freestone in Boston, and employed a great many workmen, and had entered into a contract with builders to furnish them with such stone in large quantities; and the defendants, conspiring and confederating together to oppress and extort money from him, and pretending that he had allowed some of said builders, with whom he had made contracts, to withdraw from his shop a part of the work he had contracted to do, and to procure the same to be done out of the state, caused a vote of the Journeymen Freestone Cutters' Association of Boston to be passed, to the effect that a fine of five hundred dollars was levied upon the plaintiff, and read the vote to him, and threatened him that unless he paid the fine they would, by the power of the association, cause a great number of the workmen employed by him to leave his service; that he refused to pay it, and the defendants caused twelve of his workmen to leave his service for that reason, at their instigation. They further threatened him that, unless he paid the fine, they would, by the power of the association, prevent him from obtaining suitable workmen for carrying on his business, and did so prevent him till he paid the fine, and thus extorted from him the sum of five hundred dollars.

Trial by jury was waived, and the facts found by the judge are reported. It appeared that the plaintiff had made a contract to furnish stone for the Roman Catholic Cathedral in Boston, and had employed journeymen to do the work, and relied upon them to fulfil his contracts; and the facts stated in the declaration were substantially proved. The plaintiff was not a member of the association. He had sent some of his work to be done in New York because he could not obtain a sufficient force to do it in Boston, and had not proper stock for the work. If the action can be maintained, it is on the ground that the defendants have done the acts alleged, in violation of the legal rights of the plaintiff.

By the Gen. Sts., c. 160, § 28, which is cited by the plaintiff's counsel, "whoever, either verbally or by a written or printed communication," "maliciously threatens an injury to the person or property of another, with intent thereby to extort money or any pecuniary advantage whatever, or with intent to compel the person so threatened to do any act against his will, shall be punished" as the section prescribes. As this is a penal statute, perhaps it does not extend to a threat to injure one's business by preventing people from assisting him to prosecute it, whereby he loses his profits and is compelled to pay a large sum of money to those who make the threat, though the threat is quite analogous to those specified in the statute, and may be not less injurious. We shall therefore consider, not whether the acts alleged and proved against the defendants were unlawful within the statute, but whether they were so at common law.

The constitution and by-laws of the Journeymen Freestone Cutters' Association, whose agents the defendants profess to have been, have been laid before us. We have not had occasion to exam-

ine them critically; for the doctrine stated in *Commonwealth* v. *Hunt,* 4 Met. 111, 129, is unquestionably correct, namely, that, when an association is formed for purposes actually innocent, and afterwards its powers are abused, by those who have the control and management of it, to purposes of oppression and injustice, it will be criminal in those who misuse it, but not in the other members of the association. Upon the same principle, if the wrongful acts done are tortious, whether criminal or not, the persons who are guilty of the tortious acts will be civilly liable to those whom they have injured. If the defendants have injured the plaintiff unlawfully, the articles of association cannot protect them, and it is immaterial whether persons who are not parties to the action are guilty.

The acts charged are alleged to have been done in pursuance of a conspiracy. On this point, if two or more persons combine to accomplish an unlawful purpose, or a purpose not unlawful by unlawful means, their conduct comes within the definition of a criminal conspiracy as stated in *Commonwealth* v. *Hunt,* cited above. If, in pursuance of such a conspiracy, they do an act injurious to any person, he may have an action against them to recover the damage they have done him.

One of the aims of the common law has always been to protect every person against the wrongful acts of every other person, whether committed alone or in combination with others; and it has provided an action for injuries done by disturbing a person in the enjoyment of any right or privilege which he has. Many illustrations of this doctrine are given in Bac. Ab. Actions on the Case, F., among which are the following: "If A., being a mason, and using to sell stones, is possessed of a certain stone-pit, and B., intending to discredit it and deprive him of the profits of the said mine, imposes so great threats upon his workmen, and disturbs all comers, threatening to maim and vex them with suits if they buy any stones, so that some desist from working, and others from buying, A. shall have an action upon the case against B., for the profit of his mine is thereby impaired." So "if a man menaces my tenants at will of life and member, *per quod* they depart from their tenures, an action upon the case lies against him." "If a man discharges guns near my decoy-pond with design to damnify me by frightening away the wild fowl resorting thereto, and the wild fowl are thereby frightened away, and I am damnified, an action on the case lies against him." Slander as to one's profession or title is a wrong of a similar character.

The illustrations given in former times relate to such methods of doing injury to others as were then practised, and to the kinds of remedy then existing. But as new methods of doing injury to others are invented in modern times, the same principles must be applied to them, in order that peaceable citizens may be protected from being disturbed in the enjoyment of their rights and privileges; and existing forms of remedy must be used. Thus in the recent case of *Marsh* v. *Billings,* 7 Cush. 322, the plaintiff, being a hotel-keeper, had a badge on his coaches indicating the name of his hotel. The defendant adopted his badge, and used it fraudulently to entice customers away from his hotel, and was held liable to an action for the damage occasioned to the plaintiff thereby.

In the cases cited above, the injury was done by an individual; but there are other cases where an element of the tort is a conspiracy of two or more persons who combine together for the purpose of doing the wrong. Any person has a right to express in a reasonable manner approbation or disapprobation of an actor at a theatre. But if several persons combine together to ruin an actor, and hire persons to attend, and with hissing, groans and yells, compel

him to desist, and prevent the manager from employing him, such conduct is actionable. *Gregory* v. *Brunswick,* 6 Man. & Gr. 205.

There are many cases where money has been wrongfully obtained by fraud, oppression or taking undue advantage of another, without doing him any other injury. This, being tortious, would sustain an action expressly alleging the tort. But an action for money had and received has been maintained in many cases where money has been received tortiously without any color of contract. 1 Chit. Pl. (6th ed.) 352. This class of cases is referred to, because they discuss the question what constitutes an unlawful obtaining of money, such as will subject the party obtaining it to an action for damages.

In *Shaw* v. *Woodcock,* 7 B. & C. 73, it is said that, if a party making a payment is obliged to pay the money in order to obtain possession of things to which he is entitled, the payment is not a voluntary, but a compulsory payment, and may be recovered back.

In *Morgan* v. *Palmer,* 4 D. & R. 283, Abbott, C.J., says that, in order to render a payment voluntary in the proper sense of the word, the parties concerned must stand upon equal terms; there must be no duress operating upon the one; there must be no oppression or fraud practised by the other.

In *Cadaval* v. *Collins,* 4 Ad. & El. 858, money was recovered back which was obtained by abuse of legal process.

In *Wakefield* v. *Newbon,* 6 Q. B. 276, money extorted from another by means of the wrongful detention of his goods was recovered back.

The same doctrine is well established in this country. In *Sortwell* v. *Horton,* 28 Verm. 373, the principle was stated to be, that money may be recovered back that had been paid in discharge of a claim which was fictitious and false, and known to be so by the party making the claim, and who induced the payment by menaces, duress, or taking undue advantage of the other's situation. There are several cases where the action has been maintained to recover back money which was paid to procure a release of property which the defendant had detained illegally; and in some of them the principle is thoroughly discussed. *Chase* v. *Dwinal,* 7 Greenl. 134. *Harmony* v. *Bingham,* 2 Kernan, 99. *Maxwell* v. *Griswold,* 10 How. 242. *Cobb* v. *Charter,* 32 Conn. 358. In *James* v. *Roberts,* 18 Ohio, 548, the court enjoined a party from enforcing the collection of a note which he had induced the plaintiff to give by threats of a groundless prosecution. *Evans* v. *Huey,* 1 Bay, 13, was an action on a note. The plaintiff went to the defendant's house in the night, with a party of armed men, and insisted on the defendant's settling and giving him the note. There was no threat or duress, but the court held that, as the circumstances were sufficient to awaken his apprehensions, it was not to be regarded as a voluntary payment.

In the two cases last cited, the principle was enforced by protecting the injured party against a suit.

The cases in regard to the recovery back of money which has been wrongfully obtained are very numerous. Many of them are collected in the notes to *Marriot* v. *Hampton,* 2 Smith Lead. Cas. (6th Am. ed.) 453. There is a large class of cases in which it cannot be recovered back, like *Marriot* v. *Hampton,* and like *Benson* v. *Monroe,* 7 Cush. 125. In the latter case, the defendant had made a claim in good faith, under a statute which he believed to be valid. The plaintiff had preferred to settle and pay it, rather than litigate the matter further. It turned out, by the decision in a subsequent case, that if he had carried the case to the Supreme Court of the United States he would have prevailed on the ground that the statute was unconstitutional. But neither this, nor any of the other cases, gives any countenance to the idea that money can be obtained by fraud or oppression, and

with knowledge that the claim is unfounded, without exposing the party obtaining it to an action.

Without undertaking to lay down a precise rule applicable to all cases, we think it clear that the principle which is established by all the authorities cited above, whether they are actions of tort for disturbing a man in the exercise of his rights and privileges, or to recover back money tortiously obtained, extends to a case like the present. We have no doubt that a conspiracy against a mechanic, who is under the necessity of employing workmen in order to carry on his business, to obtain a sum of money from him, which he is under no legal liability to pay, by inducing his workmen to leave him, and by deterring others from entering into his employment, or by threatening to do this, so that he is induced to pay the money demanded, under a reasonable apprehension that he cannot carry on his business without yielding to the illegal demand, is an illegal, if not a criminal, conspiracy; that the acts done under it are illegal; and that the money thus obtained may be recovered back, and, if the parties succeed in injuring his business, they are liable to pay all the damage thus done to him. It is a species of annoyance and extortion which the common law has never tolerated.

This principle does not interfere with the freedom of business, but protects it. Every man has a right to determine what branch of business he will pursue, and to make his own contracts with whom he pleases and on the best terms he can. He may change from one occupation to another, and pursue as many different occupations as he pleases, and competition in business is lawful. He may refuse to deal with any man or class of men. And it is no crime for any number of persons, without an unlawful object in view, to associate themselves together and agree that they will not work for or deal with certain men or classes of men, or work under a certain price, or without certain conditions. *Commonwealth* v. *Hunt,* 4 Met. 111, cited above. *Boston Glass Manufactory* v. *Binney,* 4 Pick. 425. *Bowen* v. *Matheson,* 14 Allen, 499.

This freedom of labor and business has not always existed. When our ancestors came here, many branches of labor and business were hampered by legal restrictions created by English statutes; and it was a long time before the community fully understood the importance of freedom in this respect. Some of our early legislation is of this character. One of the colonial acts, entitled "An act against oppression," punished by fine and imprisonment such indisposed persons as may take the liberty to oppress and wrong their neighbors by taking excessive wages for their work, or unreasonable prices for merchandises or other necessary commodities as may pass from man to man. Anc. Chart. 172. Another required artificers, or handicraftmen meet to labor, to work by the day for their neighbors, in mowing, reaping of corn and the inning thereof. Ib. 210. Another act regulated the price of bread. Ib. 752. Some of our town records show that, under the power to make by-laws, the towns fixed the prices of labor, provisions and several articles of merchandise, as late as the time of the Revolutionary War. But experience and increasing intelligence led to the abolition of all such restrictions, and to the establishment of freedom for all branches of labor and business; and all persons who have been born and educated here, and are obliged to begin life without property, know that freedom to choose their own occupation and to make their own contracts not only elevates their condition, but secures to skill and industry and economy their appropriate advantages.

Freedom is the policy of this country. But freedom does not imply a right in one person, either alone or in combination with others, to disturb or annoy another, either directly or indirectly, in

his lawful business or occupation, or to threaten him with annoyance or injury, for the sake of compelling him to buy his peace; or, in the language of the statute cited above, "with intent to extort money or any pecuniary advantage whatever, or to compel him to do any act against his will." The acts alleged and proved in this case are peculiarly offensive to the free principles which prevail in this country; and if such practices could enjoy impunity, they would tend to establish a tyranny of irresponsible persons over labor and mechanical business which would be extremely injurious to both.

Exceptions sustained.

After this decision, the case was settled by the parties, without another trial.

E. F. Hodges & J. F. Barrett, for the plaintiff.

S. J. Thomas, for the defendants.

SAMUEL WALKER *et als. v.* MICHAEL CRONIN.

WORCESTER. 1871.
107 Mass. 555.

Unjustifiable inducement of workmen to leave employment. Inducement to break existing contract.

WELLS, J. The declaration, in its first count, alleges that the defendant did, "unlawfully and without justifiable cause, molest, obstruct and hinder the plaintiffs from carrying on" their business of manufacture and sale of boots and shoes, "with the unlawful purpose of preventing the plaintiffs from carrying on their said business, and wilfully persuaded and induced a large number of persons who were in the employment of the plaintiffs," and others "who were about to enter into" their employment, "to leave and abandon the employment of the plaintiffs, without their consent and against their will;" whereby the plaintiffs lost the services of said persons, and the profits and advantages they would otherwise have made and received therefrom, and were put to large expenses to procure other suitable workmen, and suffered losses in their said business.

This sets forth sufficiently (1) intentional and wilful acts (2) calculated to cause damage to the plaintiffs in their lawful business, (3) done with the unlawful purpose to cause such damage and loss, without right or justifiable cause on the part of the defendant (which constitutes malice), and (4) actual damage and loss resulting.

The general principle is announced in Com. Dig. Action on the Case, A.: "In all cases where a man has a temporal loss or damage by the wrong of another, he may have an action upon the case to be repaired in damages." The intentional causing of such loss to another, without justifiable cause, and with the malicious purpose to inflict it, is of itself a wrong. This proposition seems to be fully sustained by the references in the case of *Carew* v. *Rutherford,* 106 Mass. 1, 10, 11.

In the case of *Keeble* v. *Hickeringill,* as contained in a note to *Carrington* v. *Taylor,* 11 East, 571, 574, both actions being for damages by reason of frightening wild fowl from the plaintiff's decoy, Chief Justice Holt alludes to actions maintained for scandalous words which are actionable only by reason of being injurious to a man in his profession or trade, and adds: "How much more, when the defendant doth an actual and real damage to another when he is in the very act of receiving profit in his employment. Now there are two sorts of acts for doing damage to a man's employment, for which an action lies; the one is in respect of a man's privilege, the other is in respect of his property." After considering injuries to a man's franchise or privilege, he proceeds: "The other is where a violent or malicious act is done to a man's occupation, profession, or way of getting a livelihood; there an action lies in all cases." From the several reports of this case it is not clear whether the action

was maintained on the ground that the wild ducks were frightened out of the plaintiff's decoy, as would appear from 3 Salk. 9, and Holt, 14, 17, 18; or upon the broader one, that they were driven away and prevented from resorting there, as the case is stated in 11 Mod. 74, 130. But the doctrine thus enunciated by Lord Holt covers both aspects of the case; as does his illustration of frightening boys from going to school, whereby loss was occasioned to the master. Of like import is the case of *Tarleton* v. *McGawley,* Peake, 205, in which Lord Kenyon held that an action would lie for frightening the natives upon the coast of Africa, and thus preventing them from coming to the plaintiff's vessel to trade, whereby he lost the profits of such trade.

There are indeed many authorities which appear to hold that to constitute an actionable wrong there must be a violation of some definite legal right of the plaintiff. But those are cases, for the most part at least, where the defendants were themselves acting in the lawful exercise of some distinct right, which furnished the defence of a justifiable cause for their acts, except so far as they were in violation of a superior right in another.

Thus every one has an equal right to employ workmen in his business or service; and if, by the exercise of this right in such manner as he may see fit, persons are induced to leave their employment elsewhere, no wrong is done to him whose employment they leave, unless a contract exists by which such other person has a legal right to the further continuance of their services. If such a contract exists, one who knowingly and intentionally procures it to be violated may be held liable for the wrong, although he did it for the purpose of promoting his own business.

One may dig upon his own land for water, or any other purpose, although he thereby cuts off the supply of water from his neighbor's well. *Greenleaf* v. *Francis,* 18 Pick. 117. It is intimated, in this case, that such acts might be actionable if done maliciously. But the rights of the owner of land being absolute therein, and the adjoining proprietor having no legal right to such a supply of water from the lands of another, the superior right must prevail. Accordingly it is generally held that no action will lie against one for acts done upon his own land in the exercise of his rights of ownership, whatever the motive, if they merely deprive another of advantages, or cause a loss to him, without violating any legal right; that is, the motive in such cases is immaterial. *Frazier* v. *Brown,* 12 Ohio State, 294. *Chatfield* v. *Wilson,* 28 Verm. 49. *Mahan* v. *Brown,* 13 Wend. 261. *Delhi* v. *Youmans,* 50 Barb. 316. A similar decision was made in *Wheatley* v. *Baugh,* 25 Penn. State, 528; but the suggestion in *Greenleaf* v. *Francis* was approved so far as this, namely, that malicious acts without the justification of any right, that is, acts of a stranger, resulting in like loss or damage, might be actionable; and the case of *Parker* v. *Boston & Maine Railroad,* 3 Cush. 107, was referred to as showing that such loss of advantages previously enjoyed, although not of vested legal right, might be a ground of damages recoverable against one who caused the loss without superior right or justifiable cause.

Every one has a right to enjoy the fruits and advantages of his own enterprise, industry, skill and credit. He has no right to be protected against competition; but he has a right to be free from malicious and wanton interference, disturbance or annoyance. If disturbance or loss come as a result of competition, or the exercise of like rights by others, it is *damnum absque injuriâ,* unless some superior right by contract or otherwise is interfered with. But if it come from the merely wanton or malicious acts of others, without the justification of competition or the service of any interest or lawful purpose, it then

stands upon a different footing, and falls within the principle of the authorities first referred to.

It is a well settled principle, that words, not actionable in themselves as defamatory, will nevertheless subject the party to an action for any special damages that may occur to another thereby. Bac. Ab. Slander, C. The same is true of words spoken in relation to property, or the title thereto, whereby the party is defeated of a sale, or suffers damage in any way. Bac. Ab. Action on the Case, I. Com. Dig. Action on the Case, C. So also, if, by a wrongful claim of title or lien, the owner is prevented from perfecting a sale, or a purchaser from obtaining delivery to himself of goods, an action will lie. *Green* v. *Button,* 2 Cr., M. & R. 707.

In all these cases, the damage for which the recovery is had is not the loss of the value of actual contracts by reason of their non-fulfilment, but the loss of advantages, either of property or of personal benefit, which. but for such interference, the plaintiff would have been able to attain or enjoy. Indeed, it has been held that loss by breach of contract, or the wrongful conduct of another than the defendant, would not be recoverable as damages under a *per quod. Vicars* v. *Wilcocks,* 8 East, 1. *Morris* v. *Langdale,* 2 B. & P. 284. Bac. Ab. Slander, C.

This doctrine has been doubted, especially in *Lumley* v. *Gye,* 2 El. & Bl. 216, 239, where the case of *Newman* v. *Zachary,* Aleyn, 3, is cited to the contrary. That was an action on the case, maintained for wrongfully representing to the bailiff of a manor that a sheep was an estray, in consequence of which it was wrongfully seized; the reason for the decision being, "because the defendant, by his false practice, hath created a trouble, disgrace and damage to the plaintiff." But the distinction is unimportant in a case like the present, where the damage to the plaintiffs is alleged to have been the direct result of the wrongful conduct of the defendant, and so intended by him; except that it is significant of the point that the existence and defeat of rights by contract are not essential to the maintenance of an action for malicious wrong, when the defendant has no pretext of justifiable cause.

The case of *Green* v. *Button,* 2 Cr., M. & R. 707, is especially in point in this connection. The defendant, by means of a false claim of a lien, and of words discrediting the plaintiff, induced one who had sold goods to the plaintiff to refuse to deliver them, whereby he was injured in his business. The court, alluding to the doubts that had been expressed as to *Vicars* v. *Wilcocks* and *Morris* v. *Langdale,* and without deciding that question, distinguished the case under consideration, on the ground that, the goods not having been paid for, there was no absolute contract to deliver, upon which the plaintiff could have his remedy against the seller; that is, as the delivery was prevented by the wrongful conduct of the defendant, and there was no binding contract broken by the seller, therefore the plaintiff was entitled to recover in his action on the case *per quod.*

In *Gunter* v. *Astor,* 4 J. B. Moore, 12, an action was maintained for enticing away workmen from their employment for a piano manufacturer. They were not hired for a limited time, but worked by the piece. The discussion indicates that damages were considered to be recoverable for the breaking up or disturbance of the business of the plaintiff, whereby he suffered the loss of his usual profits for a long period. The grounds of damage were apparently regarded as altogether independent of the mere loss of any contracts with the workmen.

In *Benton* v. *Pratt,* 2 Wend. 385, it is held that proof of loss by the plaintiff of what he would otherwise have obtained, though there was no contract for it which he could enforce, will sustain an action for the wrongful conduct by which the loss was occasioned.

The difficulty in such cases is to make certain, by proof, that there has been in fact such loss as entitles the party to reparation; but that difficulty is not encountered in the present stage of this case, where all the facts alleged are admitted by the demurrer. The demurrer also admits the absence of any justifiable cause whatever. This decision is made upon the case thus presented, and does not apply to a case of interference by way of friendly advice, honestly given; nor is it in denial of the right of free expression of opinion. We have no occasion now to consider what would constitute justifiable cause.

The second and third counts recite contracts of the plaintiffs with their workmen for the performance of certain work in the manufacture of boots and shoes; and allege that the defendant, well knowing thereof, with the unlawful purpose of hindering and preventing the plaintiffs from carrying on their business, induced said persons to refuse and neglect to perform their contracts, whereby the plaintiffs suffered great damage in their business.

It is a familiar and well established doctrine of the law upon the relation of master and servant, that one who entices away a servant, or induces him to leave his master, may be held liable in damages therefor, provided there exists a valid contract for continued service, known to the defendant. It has sometimes been supposed that this doctrine sprang from the English statute of laborers, and was confined to menial service. But we are satisfied that it is founded upon the legal right derived from the contract, and not merely upon the relation of master and servant; and that it applies to all contracts of employment, if not to contracts of every description.

In *Hart* v. *Aldridge,* Cowp. 54, it was applied to a case very much like the present.

In *Gunter* v. *Astor,* 4 J. B. Moore, 12, it was applied to the enticing away of workmen not hired for a limited or constant period, but who worked by the piece for a piano manufacturer.

In *Sheperd* v. *Wakeman,* Sid. 79, it was applied to the loss of a contract of marriage by reason of a false and malicious letter claiming a previous engagement.

In *Winsmore* v. *Greenbank,* Willes, 577, the defendant was held liable in damages for unlawfully and unjustly "procuring, enticing and persuading" the plaintiff's wife to remain away from him, whereby he lost the comfort and society of his wife, and the profit and advantage of her fortune.

In *Lumley* v. *Gye,* 2 El. & Bl. 216, the plaintiff had engaged Miss Wagner to sing in his opera, and the defendant knowingly induced her to break her contract and refuse to sing. It was objected that the action would not lie, because her contract was merely executory, and she had never actually entered into the service of the plaintiff; and Coleridge, J., dissented, insisting that the only foundation for such an action was the statute of laborers, which did not apply to service of that character; but after full discussion and deliberation it was held that the action would lie for the damages thus caused by the defendant.

In *Boston Glass Manufactory* v. *Binney,* 4 Pick. 425, which was for inducing workmen, skilled in several departments of glass-making, to leave the employment of the plaintiff, it was not suggested that the defendants would not have been liable if there had been an existing contract between the plaintiff and the workmen.

Upon careful consideration of the authorities, as well as of the principles involved, we are of opinion that a legal cause of action is sufficiently stated in each of the three counts of the declaration. *Demurrer overruled.*

P. E. Aldrich & T. G. Kent, for the plaintiffs.

H. B. Staples (*C. Cowley & F. P. Goulding* with him), for the defendant.

WILLIAM A. SNOW *et als v.* DANIEL W. WHEELER *et als.*

WORCESTER. 1873.
113 Mass. 179.

Legality of trades organization, declared.

Bill in equity brought by the plaintiffs on behalf of themselves and other members of the North Brookfield Lodge No. 28 of the Order of the Knights of St. Crispin against certain persons to compel them to sign an order to withdraw money belonging to the Lodge and deposited in the name of the defendants as trustees. The North Brookfield Lodge No. 28 of the Order of the Knights of St. Crispin was one of the subordinate lodges of the International Grand Lodge of the Order of the Knights of St. Crispin and was a voluntary association of boot and shoe workers.

C. Cowley, for the plaintiffs.

P. E. Aldrich, for the defendants.

COLT, J. This bill is brought on behalf of a voluntary association, the individual members of which are too numerous to be joined as plaintiffs, and it is therefore brought in the name of a few, for themselves and all the other members. *Birmingham* v. *Gallagher*, 112 Mass. 190. It is heard upon the pleadings and master's report.

The individuals named as defendants were members of the association, and received its funds from the treasurer as a committee chosen to deposit the same for safe keeping in the bank, which is named as a co-defendant in the bill. The money was deposited in their names, as trustees, and they now refuse to restore it to the control of the association — the defendant bank refusing to pay without an order signed by the trustees, but submitting itself to the decree of the court.

The only question before us is, whether upon the facts stated in the master's report, and contained in the documents referred to, the trust set forth must have been assumed by the defendants for an illegal purpose. The plaintiffs are clearly entitled to recover their own money thus detained by parties who received it in a fiduciary capacity, unless it appears that the money was delivered to them, or must be held when recovered by the plaintiffs, for a purpose immoral, illegal or contrary to public policy.

The object and purposes of the association which the plaintiffs represent are shown by the constitution and by-laws of the lodge, which are made part of the case; these are subscribed to by each member at the time of his admission, with an additional agreement "not to teach or cause to be taught any new hand any part or parts of the boot or shoe trade without the permission of the lodge of which I am a member." Its members are wholly composed of individuals employed as workmen in the manufacture of boots and shoes, but it does not include proprietors or their foremen.

It is insisted that the agreements thus established between the members of the order are in unlawful restraint of trade, and therefore illegal, as being against public policy. But in the opinion of the court the point is not well taken. In the relations existing between labor and capital, the attempt by co-operation on the one side to increase wages by diminishing competition, or on the other to increase the profits due to capital, is within certain limits lawful and proper. It ceases to be so when unlawful coercion is employed to control the freedom of the individual in disposing of his labor or capital. It is not easy to give a definition which shall include every form of such coercion; it is enough that in the compact before us there is no evidence of any purpose to use such unlawful means in any form.

In *Walker* v. *Cronin,* 107 Mass. 555, 564, it is said that "every one has a right to enjoy the fruits and advantages of his own enterprise, industry, skill and credit. He has no right to be protected against competition; but he has a right to be free from malicious and wanton interference, disturbance or annoy-

ance. If disturbance or loss come as a result of competition or the exercise of like rights by others, it is *damnum absque injuriâ.*"

In *Carew* v. *Rutherford,* 106 Mass. 1, 14, it is said, "Every man has a right to determine what branch of business he will pursue, and to make his own contracts with whom he pleases and on the best terms he can." "He may refuse to deal with any man or class of men. And it is no crime for any number of persons, without an unlawful object in view, to associate themselves together and agree that they will not work for or deal with certain men or classes of men, or work under a certain price, or without certain conditions." And in *Commonwealth* v. *Hunt,* 4 Met. 111, 134, Shaw, C.J., declares that the legality of such association will depend upon the means to be used for the accomplishment of its objects and whether they be innocent or otherwise.

In the case at bar there is no evidence afforded by the documents submitted to us that the purposes of this association are unlawful by the rule stated. Unlawful coercion certainly does not appear to be intended. And the right of the members to instruct whom they choose in the mysteries of their trade cannot be denied. The case presented is not one where there is evidence to justify us in finding that the objects and purposes of the association are fraudulently and colorably declared as a cover for a secret unlawful agreement of its members. It will be time enough to deal with such a case when it arises.

In this view, it is not necessary critically to examine the instances of alleged illegal conduct which it is said are found upon the records of the association, or to inquire whether they amount to illegal restraint of that freedom in trade which the law secures to all, because specific wrongful acts cannot be shown to defeat the plaintiffs' claim, unless it be also shown that such acts come within the scope and purpose of the organization. Each act of wrong, outside the declared and real purpose of the lodge, stands by itself, to be answered for only by those who join in its perpetration.

Decree for the plaintiffs, with costs against the individual defendants only.

PATRICK P. SHERRY *et als. v.* CHARLES E. PERKINS *et al.*

ESSEX. JUNE 19, 1888.

147 Mass. 212

Display of banners by striking workmen in front of employer's factory enjoined.

Bill in equity alleging that the first-named plaintiff was engaged in the business of manufacturing boots and shoes in Lynn; that there was a voluntary association in Lynn called the Lasters Protective Union, composed of persons engaged in lasting boots and shoes, of which the first-named defendant was the president, and the other defendant, Charles H. Leach, was the secretary; that a question having arisen as to wages, on January 8, 1887, certain lasters left the plaintiffs' employment, giving as a reason therefor that they did not dare to work for them further on account of the defendants; that, in order to intimidate others from taking their places and to prevent such lasters from re-engaging in their employment, the defendants, with the assent of the association and out of its moneys, caused to be carried in front of Sherry's factory, by a boy hired for that purpose, a banner bearing the following inscription: "Lasters are requested to keep away from P. P. Sherry's. Per order L P. U."

The bill further alleged, that, because of such banners, crowds of people gathered in front of the factory when the lasters left their work; that the lasters were injured and threatened with bodily harm if they continued in the plaintiffs'

employment; that the banner and the acts of the defendants were part of a scheme to prevent persons from entering the plaintiffs' employment, and that the banner was carried in front of the factory until March 22, 1887, when another banner was substituted with the following inscription: "Lasters on a strike and lasters are requested to keep away from P. P. Sherry's until the present trouble is settled. Per order L. P. U."

The bill also alleged that the business carried on by the plaintiffs was a large one, and if the defendants were permitted to continue it would be seriously injured and destroyed.

The prayer of the bill was, that the defendants might be restrained from making such banners, and from causing them to be similarly carried, and for further relief.

Hearing before *C. Allen,* J., who found the facts substantially as alleged and reported the case for the consideration of the full court.

J. R. Baldwin, for the defendants.

R. Lund & F. Hurlburt (*T. M. Osborne* with them), for the plaintiffs.

W. Allen, J. The case finds that the defendants entered, with others, into a scheme, by threats and intimidation, to prevent persons in the employment of the plaintiffs from continuing in such employment, and to prevent others from entering into such employment; that the banners with their inscriptions were used by the defendants as part of the scheme; and that the plaintiffs were thereby injured in their business and property.

The act of displaying banners with devices, as a means of threats and intimidation to prevent persons from entering into or continuing in the employment of the plaintiffs, was injurious to the plaintiffs, and illegal at common law and by statute. Pub. Sts. c. 74, § 2. *Walker* v. *Cronin,* 107 Mass. 555. We think that the plaintiffs are not restricted to their remedy by an action at law, but are entitled to relief by injunction. The acts and the injury were continuous. The banners were used more than three months before the filing of the plaintiffs' bill, and continued to be used at the time of the hearing. The injury was to the plaintiffs' business, and adequate remedy could not be given by damages in a suit at law.

The wrong is not, as argued by the defendants' counsel, a libel upon the plaintiffs' business. It is not found that the inscriptions upon the banners were false, nor do they appear to have been in disparagement of the plaintiffs' business. The scheme in pursuance of which the banners were displayed and maintained was to injure the plaintiffs' business, not by defaming it to the public, but by intimidating workmen, so as to deter them from keeping or making engagements with the plaintiffs. The banner was a standing menace to all who were or wished to be in the employment of the plaintiffs, to deter them from entering the plaintiffs' premises. Maintaining it was a continuous unlawful act, injurious to the plaintiffs' business and property, and was a nuisance such as a court of equity will grant relief against. *Gilbert* v. *Mickle,* 4 Sandf. Ch. 357. *Springhead Spinning Co.* v. *Riley,* L. R. 6 Eq. 551.

Boston Diatite Co. v. *Florence Manuf. Co.,* 114 Mass. 69, was a case of defamation only. Some of the language in *Springhead Spinning Co.* v. *Riley* has been criticised, but the decision has not been overruled. See *Boston Diatite Co.* v. *Florence Manuf. Co., ubi supra; Prudential Assurance Co.* v. *Knott,* L. R. 10 Ch. 142; *Saxby* v. *Easterbrook,* 3 C. P. D. 339; *Thorley's Cattle Food Co.* v. *Massam,* 14 Ch. D. 763; *Thomas* v. *Williams,* 14 Ch. D. 864; *Day* v. *Brownrigg,* 10 Ch. D. 294; *Gaskin* v. *Balls,* 13 Ch. D. 324; *Hill* v. *Davies,* 21 Ch. D. 798; *Hermann Loog* v. *Bean,* 26 Ch. D. 306.

Decree for the plaintiffs.

Worthington *v.* Waring.

DINAH WORTHINGTON *et als. v.* JAMES WARING *et als.*

BRISTOL. DECEMBER 3, 1892.
157 Mass. 421.

Injunction against blacklist of striking employees denied.

FIELD, C.J. We take the substance of the petition to be that the petitioners were weavers by trade, and had been employed by the Narragansett Mills, a corporation in Fall River, and that they demanded higher wages, which the corporation refused to give; that they then left work, and that the defendants, who were the treasurer and superintendent of the corporation, sent their names to the officers of other mills in Fall River on a list which is called a black list, which informed these officers that the petitioners had left the Narragansett Mills on what is called a strike; and that thereupon the defendants conspired together and with the officers of other mills, and agreed not to employ the petitioners, with intent to compel them either to go without work in Fall River, or to go back to work for the Narragansett Mills at such wages as that corporation should see fit to pay them. It does not appear by the petition that any of the petitioners had existing contracts for labor with which the defendants interfered. The prayer was that the respondents be restrained from annoying the petitioners, and interfering with their rights to earn their livelihood at their trade in Fall River, and that they be enjoined to withdraw and destroy all black lists or other devices issued by them or their orders mentioning the names of the petitioners.

If the petition sets forth such a conspiracy as constitutes a misdemeanor at common law, on which we express no opinion, the remedy is by indictment. If the injury which had been received by the petitioners at the time the petition was filed constitutes a cause of action, on which we express no opinion, the remedy is by an action of tort, to be brought by each petitioner separately. The only grievance alleged which is continuing in its nature is the conspiracy not to employ the petitioners, and there are no approved precedents in equity for enjoining the defendants from continuing such a conspiracy, or for compelling the defendants either to employ the petitioners or to procure employment for them with other persons. See *Boston Diatite Co.* v. *Florence Manuf. Co.,* 114 Mass. 69; *Raymond* v. *Russell,* 143 Mass. 295; *Smith* v. *Smith,* 148 Mass. 1; *Carleton* v. *Rugg,* 149 Mass. 550; *Workman* v. *Smith,* 155 Mass. 92. It is plain, however, that the petition was drawn with a view to obtain some equitable relief. It is well known that equity has, in general, no jurisdiction to restrain the commission of crimes, or to assess damages for torts already committed. Courts of equity often protect property from threatened injury when the rights of property are equitable, or when, although the rights are legal, the civil and criminal remedies at common law are not adequate, but the rights which the petitioners allege the defendants were violating, at the time the petition was filed, are personal rights, as distinguished from rights of property.

The counsel for the petitioners contends that the petition can be maintained under St. of 1887, c. 383, and it has been suggested that this suit is partly an action at law and partly a suit in equity, and that, if it cannot be maintained as either the one or the other, it can be maintained under this statute, as partaking somewhat of the nature of both. This statute has been often referred to at the bar as one the meaning of which is not clear, and it becomes necessary to consider it. An examination of it shows that it relates solely to procedure; that it does not purport to change the substantive law, or to create any new cause of action either at law or in equity, or any new kind of relief either legal or equitable, or to change the jurisdiction of the two courts which are mentioned in the first section. It is provided in the

fourth section that "Nothing in this act shall be construed to . . . extend or limit the power or jurisdiction of the court in proceedings at law or in equity, except as herein expressly provided," and no extension of the power or jurisdiction of either of the courts mentioned is expressly provided for in the statute, unless the addition of a new original process to be used in civil actions at law, made by the first section, is such an extension. The first section, so far as it relates to suits in equity, is taken from Pub. Sts. c. 151, §§ 1, 5, 6. See St. 1880, c. 37; St. 1883, c. 223, §§ 1, 11. Cases in equity under pre-existing statutes could be commenced by a bill or petition with a writ of subpœna, or by an original writ with a bill or petition, or with a declaration in an action of contract or tort praying relief in equity, inserted in it. But civil actions at law, with some exceptions, could be commenced only by an original writ. Pub. Sts. c. 161, § 13, *et seq.* The first section of St. of 1887, c. 383, permits civil actions at law, except replevin, to be commenced by a bill or petition which is in the nature of a declaration, and by the service of a subpœna which is in the nature of a writ of original summons. With this exception, the statute does not purport to change the law relating to pleadings, nor to abolish the distinction between legal and equitable rights or remedies. The second section provides that "All provisions of law relating to pleadings shall apply to such proceedings so far as the same are applicable." This is not very intelligible as a statement of what provisions were considered by the Legislature to be applicable, but it was probably inserted for the purpose of excluding any inference that the statute was intended to abolish the established forms of pleading. The Pub. Sts. c. 167, and other well known statutes, contain elaborate provisions regulating pleading and procedure in actions at law, and there is no intimation in St. of 1887, c. 383, that these provisions were intended to be repealed, and they are not inconsistent with any of the provisions of that statute, except that a bill or petition with a subpœna may be used instead of a common law writ and a declaration. The Pub. Sts. c. 151, the St. of 1883, c. 223, and other statutes, contain elaborate provisions regulating the pleading and procedure in suits in equity, and there is no intimation in the statute of 1887 that these provisions were intended to be repealed, and they are all consistent with the provisions of that statute. The Legislature could, of course, abolish all distinctions between actions at law and suits in equity, and adopt one form of procedure for all actions; but such a radical change is not to be inferred from a few general words of doubtful import, such as are contained in the third section of this statute. By the Revised Statutes suits in equity were to be commenced by bill with a subpœna, or by a bill inserted in a writ of original summons, with or without an order for the attachment of property; Rev. Sts. c. 90, § 117; c. 107, § 22; and the Supreme Judicial Court had power "to make and award all such judgments, decrees, orders, and injunctions, to issue all such executions and other writs and processes, and to do all such other acts as may be necessary or proper to carry into full effect all the powers which are or may be given to them by the laws of the Commonwealth." Rev. Sts. c. 81, §§ 5, 6, 9. The St. of 1853, c. 371, was entitled "An act giving equitable remedies in suits at law," and the principal subjects of equity jurisdiction were in effect divided in the first and second sections into two classes, and it was provided in § 1, that all suits upon one class of subjects "shall be by action of contract, setting forth the facts and circumstances of the case, so far as may be necessary, and praying for relief in equity;" and in § 2, that all suits upon the other class "shall be by action of tort, in which the plaintiff, in addition to his claim for damages, may pray for

relief in equity." The Supreme Judicial Court was given exclusive jurisdiction of the suits, and empowered, "as well in term time as vacation," to "make and award all such decrees, judgments, orders, and injunctions; and issue all such executions and other writs and processes, and do all such other acts, as may be necessary or proper to carry into full effect the power to grant such relief." The St. of 1855, c. 194, § 2, provided that, "When relief is sought in equity, the material facts and circumstances relied on shall be stated with brevity, omitting all immaterial and irrelevant matter, either in the form of a bill, or petition to the court, or in a declaration in an action of contract or tort." The St. of 1856, c. 38, § 2, provided that "Suits in equity may be commenced by bill, or by writ of attachment." The substance of these statutes was incorporated in the Gen. Sts. c. 113, §§ 1 and 3, and is now contained in the Pub. Sts. c. 151, §§ 1 and 5. The Pub. Sts. c. 153, § 3, provides that the Supreme Judicial and the Superior Courts "may make and award judgments, decrees, orders, and injunctions, and shall issue all writs and processes necessary or proper to carry into effect the powers granted to them; and when no form for any such writ or process is prescribed, the court shall frame one in conformity with the principles of law and the usual course of proceedings in the courts of this Commonwealth." See Pub. Sts. c. 151, § 1; St. 1883, c. 223, § 1.

The decisions of this court upon the effect of St. of 1853, c. 371, which provided in substance that suits in equity should be in form either an action of contract or of tort, show that the court did not construe that statute as abolishing the essential distinctions between legal and equitable suits, or legal and equitable remedies, and that, under that statute, a suit must be either an action at law or a suit in equity, and not both one and the other, or partly one and partly the other. *Darling* v. *Roarty,* 5 Gray, 71. *Winslow* v. *Otis,* 5 Gray, 360. *Topliff* v. *Jackson,* 12 Gray, 565. *Irvin* v. *Gregory,* 13 Gray, 215. *Harvey* v. *DeWitt,* 13 Gray, 536. *Crane* v. *Adams,* 16 Gray, 542. *Stockbridge Iron Co.* v. *Cone Iron Works,* 99 Mass. 468. In *Irvin* v. *Gregory,* 13 Gray, 215, 217, the court say: "The suit is in form an action at law, praying relief in equity; and as specific performance cannot be had by a judgment at law, but may be afforded in equity, we regard this action, by force of the St. of 1853, as a suit in equity, and that rules and principles of equity are applicable to it." *Harvey* v. *DeWitt,* 13 Gray, 536, 537, was an action of contract in three counts, and in the third count the plaintiff prayed for relief in equity. The court say that the action cannot be maintained. "It attempts to combine, in one suit, matters purely of law, and matters in equity. It cannot be maintained as a suit in equity; because it is apparent that, as to the claim in the first count at least, the plaintiff, if he has any remedy, has a plain, adequate and complete remedy at law. Nor can it be maintained as a suit at law; because it was brought originally in this court, without an affidavit stating that the amount sought to be recovered exceeded three hundred dollars. St. 1840, c. 87, § 1." *Stockbridge Iron Co.* v. *Cone Iron Works* was an action of tort, praying for relief in equity, brought in the Supreme Judicial Court, and there was no affidavit that the damage demanded exceeded one thousand dollars, as provided by the Gen. Sts. c. 112, § 6. The court say: "The prayer for relief gives jurisdiction of the action, and therefore no affidavit is necessary. Its character is that of a suit in equity." If this court were of opinion that a suit in equity did not lose its essential characteristics when brought as an action of contract or of tort under St. of 1853, c. 371, it seems manifest that an action at law brought under St. of 1887, c. 383, by bill or petition with a subpœna, instead of by an original writ,

does not lose the essential characteristics of an action at law.

Some of the consequences of holding that the distinctions between equitable and legal suits were intended to be abolished by the statute of 1887, may be briefly considered. The Supreme Judicial Court has no jurisdiction over actions of tort, and only a very limited jurisdiction over actions of contract, dependent upon the amount of the damages demanded, to which the plaintiff, or some one in his behalf, must make oath. The Superior Court has a general jurisdiction over civil actions at law, when the debt or damages claimed exceed one hundred dollars, and concurrent jurisdiction in equity with the Supreme Judicial Court over most, but not all, suits in equity. It could not have been intended by the statute of 1887 that an action at law to recover twenty dollars might be brought in the Supreme Judicial Court by bill or petition, or that all actions of tort might be brought in that court in the same manner. Whether brought by a bill or petition, or by a writ and declaration, they are still actions at law, in distinction from suits in equity, and the provisions which determine the jurisdiction of courts according to this distinction must still be in force. The system of pleading and procedure in actions at law, and in suits in equity, are different in important respects, and substantial rights depend upon the question whether any particular suit is one or the other. If, on the face of the papers, it appears that the court has no jurisdiction of the proceeding, it may be dismissed on motion, and whether the court has jurisdiction may depend upon the question whether it is an action at law or a suit in equity. In an action at law either party has a right to a trial by jury, if seasonably demanded; but it has been held that, in a suit in equity, the plaintiff has not such a right, and that the defendant has not, except in those cases in which the constitution secures to him the right to a jury trial. Issues for a jury are usually framed in equity, in the discretion of the court. Suits in equity are often sent to masters, and actions at law to auditors, and the effect of the report in one case is not the same as in the other. A judgment at law for the payment of money is enforced by an execution, and the rights of a poor debtor arrested on execution at law are carefully provided for by statute; but although a court of equity may enforce a decree for the payment of money by issuing an execution in form as at common law under authority of the statutes, it may also enforce it by an attachment for contempt, and thus affect the rights of a debtor to be discharged under the statutes relating to the relief of poor debtors. Provisions for appeal to the full court are, in some important respects, different in suits in equity from those in actions at law. These examples show the importance of determining whether any particular civil proceeding is an action at law or a suit in equity.

The third section of the statute of 1887 must be construed with reference to the remainder of the statute, and to the provisions in force when the statute was passed, relating to pleading and procedure. As we think it plain that the statute was not intended to change generally the laws relating to pleading and procedure, or to abolish the distinction between legal and equitable proceedings, or to create new causes of action or new kinds of relief, this section must have a very limited scope. Under pre-existing statutes, courts of equity have the right to issue "all general and special writs and processes required in proceedings in equity to courts of inferior jurisdiction, corporations, and persons, when necessary to secure justice and equity." St. 1883, c. 223, § 1. Pub. Sts. c. 151, § 1. The Supreme Judicial Court and the Superior Court, both at law and in equity, have authority to "issue all writs and processes necessary or proper to carry into effect the powers

granted to them." Pub. Sts. c. 153, § 3. The statutes have expressly authorized in certain cases the use of certain legal processes by courts of equity, and of certain equitable processes by courts of law, of which examples may be found in Pub. Sts. c. 151, § 29; c. 179, § 12; c 180, § 6. Certain equitable defences in actions at law are permitted by St. of 1883, c. 223, § 14, and in certain actions at law a claimant is permitted to appear, and the action becomes substantially a suit of interpleader. St. 1886, c. 281. The provisions are ample for amending actions at law into suits in equity, and suits in equity into actions at law. St. 1883, c. 223, § 17. Pub. Sts. c. 167, § 43. By St. 1885, c. 384, terms have been abolished in the Supreme Judicial Court and the Superior Court, and these courts can issue any proper process at any time. Courts of equity, when they take jurisdiction of a bill, sometimes go on and decide, as incidental to the equitable matter contained in it, controversies which, standing alone, could only be determined in an action at law, but the third section of St. of 1887, c. 383, cannot be held to relate to this subject. A defendant, either in an action at law or in a suit in equity, is entitled to affirmative relief against the plaintiff only in well defined cases, and the pleadings must set forth his claim according to the established practice in law or equity. In certain suits in equity, both the plaintiff and the defendant may be entitled to relief, as, for instance, in suits to settle the affairs of a partnership, and suits for the foreclosure or the redemption of a mortgage. The relief which the court is authorized to give by St. of 1887, c. 383, § 3, "as the nature of the case may require," must be determined by the law as established, because the section does not purport to authorize forms of relief previously unknown to either law or equity. The only word which really occasions any doubt of the meaning of this third section is the word "both" in the first clause; but, in view of all the provisions of this statute, it must be taken that this refers to cases in which, by the customary practice, or the provisions of other statutes, both legal and equitable relief can be given in the same suit. We think that the intention of the statute of 1887 is, that each proceeding under it must be treated either as an action at law or as a suit in equity, with the incidents which, by established practice, or by other statutes, attach to the particular action or suit, and that the pleadings and procedure must conform to this view. The provision that the court may issue "any writs, orders, injunctions, or other processes necessary, at any stage of the proceedings," would seem to add little or nothing to the powers of the courts under other statutes. The present petition cannot be maintained, either as an action at law or a suit in equity.

Petition dismissed.

H. A. Dubuque, for the petitioners.

A. J. Jennings (*A. S. Phillips* with him), for the respondents.

FREDERICK O. VEGELAHN *v.* GEORGE M. GUNTNER *et als.*

SUFFOLK. OCTOBER 26, 1896.

167 Mass. 92.

Maintaining patrol in front of employer's premises by striking employees, enjoined.

Bill in equity, filed December 7, 1894, against fourteen individual defendants and two trades unions, alleging that the plaintiff was engaged in business as a manufacturer of furniture, in the premises numbered 141, 143, 145, and 147 North Street, in Boston, and employed a large number of men in carrying on his business there; that there were in Boston certain associations named as defendants, which were composed of persons engaged in similar occupations to that of the individual defendants, of whom the defendant Guntner was agent; that on or about October 11, 1894, the plaintiff received a communication from

the defendant unions as follows: "Your upholsterers do hereby kindly submit enclosed Price-list for your earnest consideration, the object is to institute a more equal competition this we would asked to go into effect on and after Oct. 29, 1894, and we kindly request that after said date Nine hours constitute a day's work;" that on or about November 21, 1894, without notice and without warning, all of the individual defendants, except Guntner, struck, and left the plaintiff's employment and premises in a body; that since that date the plaintiff had endeavored to carry on his business, and to employ other men to fill the places of the defendants, but the defendants, their agents and servants, had wilfully and maliciously patrolled the streets in front of his premises in groups and squads continuously, and had used indecent language and epithets to those working in his employ in the places made vacant by the defendants; that they had wilfully and maliciously blocked up the doorway and entrance of his premises, and there intercepted, interfered with, and intimidated persons who desired to visit the premises for the purpose of engaging in the employment of the plaintiff, and for the purpose of trading with the plaintiff; that they had wilfully and maliciously intimidated and threatened the persons whom he had employed to take their places with bodily harm if they continued in the plaintiff's employment, and had caused certain new men so employed to leave his employment; that they had notified the insurance companies that the property there insured was in danger, and had attempted to effect a cancellation of the insurance carried by the plaintiff on his stock of goods; that they had followed the delivery team of the plaintiff in divers places and cities, and had been to several customers of the plaintiff and threatened to injure them and their business if they continued to trade with the plaintiff, and generally to injure the plaintiff in his said business, and to prevent his continuing to carry on his business; that the defendants, their agents and servants, had been and were a nuisance and obstruction to persons travelling on the street, and to persons in the employ of the plaintiff, and to persons intending to trade with the plaintiff at his premises; that all acts of the defendants were a part of a scheme to prevent persons from entering the employment of the plaintiff and from continuing in his employment; that the business carried on by the plaintiff was a large one, and the good will was of considerable value, in both of which the plaintiff had already been injured; and that, if the defendants were permitted to continue their acts, both the business and the good will would be further seriously injured and destroyed.

The prayer of the bill was that the defendants might be restrained from visiting, or causing other persons to visit, the premises occupied by the plaintiff, or from stopping or remaining in the vicinity of the premises for the purpose of interfering with the workmen of the plaintiff or any person who might desire to enter his employment, or by intimidation, insults, or threats from inducing any person in the employment of the plaintiff to leave, or any person to refrain from entering into, such employment; and from any and all acts within or in the immediate vicinity of the plaintiff's premises which would tend to obstruct him in the transaction of his business therein, or intimidate or annoy the workmen of the plaintiff as they enter into or depart from the premises, and from annoying and intimidating persons who might desire to work therein; and for further relief.

The following decree was entered at a preliminary hearing upon the bill: "This cause came on to be heard upon the plaintiff's motion for a temporary injunction; and after due hearing, at which the several defendants were represented by counsel, it is ordered, ad-

judged, and decreed that an injunction issue *pendente lite,* to remain in force until the further order of this court, or of some justice thereof, restraining the respondents and each and every of them, their agents and servants, from interfering with the plaintiff's business by patrolling the sidewalk or street in front or in the vicinity of the premises occupied by him, for the purpose of preventing any person or persons who now are or may hereafter be in his employment, or desirous of entering the same, from entering it, or continuing in it; or by obstructing or interfering with such persons, or any others, in entering or leaving the plaintiff's said premises; or by intimidating, by threats or otherwise, any person or persons who now are or may hereafter be in the employment of the plaintiff, or desirous of entering the same, from entering it, or continuing in it; or by any scheme or conspiracy among themselves or with others, organized for the purpose of annoying, hindering, interfering with, or preventing any person or persons who now are or may hereafter be in the employment of the plaintiff, or desirous of entering the same, from entering it, or from continuing therein."

Hearing upon the bill and answers before *Holmes,* J., who reported the case for the consideration of the full court, as follows:

"The facts admitted or proved are that, following upon a strike of the plaintiff's workmen, the defendants have conspired to prevent the plaintiff from getting workmen, and thereby to prevent him from carrying on his business unless and until he will adopt a schedule of prices which has been exhibited to him, and for the purpose of compelling him to accede to that schedule, but for no other purpose. If he adopts that schedule he will not be interfered with further. The means adopted for preventing the plaintiff from getting workmen are, (1) in the first place, persuasion and social pressure. And these means are sufficient to affect the plaintiff disadvantageously, although it does not appear, if that be material, that they are sufficient to crush him. I ruled that the employment of these means for the said purpose was lawful, and for that reason refused an injunction against the employment of them. If the ruling was wrong, I find that an injunction ought to be granted.

"(2) I find also, that, as a further means for accomplishing the desired end, threats of personal injury or unlawful harm were conveyed to persons seeking employment or employed, although no actual violence was used beyond a technical battery, and although the threats were a good deal disguised, and express words were avoided. It appeared to me that there was danger of similar acts in the future. I ruled that conduct of this kind should be enjoined.

"The defendants established a patrol of two men in front of the plaintiff's factory, as one of the instrumentalities of their plan. The patrol was changed every hour, and continued from half-past six in the morning until half-past five in the afternoon, on one of the busy streets of Boston. The number of men was greater at times, and at times showed some little inclination to stop the plaintiff's door, which was not serious, but seemed to me proper to be enjoined. The patrol proper at times went further than simple advice, not obtruded beyond the point where the other person was willing to listen, and conduct of that sort is covered by (2) above, but its main purpose was in aid of the plan held lawful in (1) above. I was satisfied that there was probability of the patrol being continued if not enjoined. I ruled that the patrol, so far as it confined itself to persuasion and giving notice of the strike, was not unlawful, and limited the injunction accordingly.

"There was some evidence of persuasion to break existing contracts. I ruled that this was unlawful, and should be enjoined.

"I made the final decree appended hereto. If, on the foregoing facts, it ought to be reversed or modified, such decree is to be entered as the full court may think proper; otherwise, the decree is to stand."

The final decree was as follows: "This cause came on to be heard, and was argued by counsel; and thereupon, on consideration thereof, it is ordered, adjudged, and decreed that the defendants, and each and every of them, their agents and servants, be restrained and enjoined from interfering with the plaintiff's business by obstructing or physically interfering with any persons in entering or leaving the plaintiff's premises numbered 141, 143, 145, 147 North Street in said Boston, or by intimidating, by threats, express or implied, of violence or physical harm to body or property, any person or persons who now are or hereafter may be in the employment of the plaintiff, or desirous of entering the same, from entering or continuing in it, or by in any way hindering, interfering with, or preventing any person or persons who now are in the employment of the plaintiff from continuing therein, so long as they may be bound so to do by lawful contract."

The case was argued at the bar in March, 1896, and afterwards was submitted on briefs to all the judges.

T. H. Russell, for the defendants.

E. B. Hale, for the plaintiff.

Allen, J. The principal question in this case is whether the defendants should be enjoined against maintaining the patrol. The report shows that, following upon a strike of the plaintiff's workmen, the defendants conspired to prevent him from getting workmen, and thereby to prevent him from carrying on his business, unless and until he should adopt a certain schedule of prices. The means adopted were persuasion and social pressure, threats of personal injury or unlawful harm conveyed to persons employed or seeking employment, and a patrol of two men in front of the plaintiff's factory, maintained from half past six in the morning till half past five in the afternoon, on one of the busiest streets of Boston. The number of men was greater at times, and at times showed some little disposition to stop the plaintiff's door. The patrol proper at times went further than simple advice, not obtruded beyond the point where the other person was willing to listen; and it was found that the patrol would probably be continued, if not enjoined. There was also some evidence of persuasion to break existing contracts.

The patrol was maintained as one of the means of carrying out the defendants' plan, and it was used in combination with social pressure, threats of personal injury or unlawful harm, and persuasion to break existing contracts. It was thus one means of intimidation indirectly to the plaintiff, and directly to persons actually employed, or seeking to be employed, by the plaintiff, and of rendering such employment unpleasant or intolerable to such persons. Such an act is an unlawful interference with the rights both of employer and of employed. An employer has a right to engage all persons who are willing to work for him at such prices as may be mutually agreed upon; and persons employed or seeking employment have a corresponding right to enter into or remain in the employment of any person or corporation willing to employ them. These rights are secured by the Constitution itself. *Commonwealth* v. *Perry,* 155 Mass. 117. *People* v. *Gillson,* 109 N. Y. 389. *Braceville Coal Co.* v. *People,* 147 Ill. 66, 71. *Ritchie* v. *People,* 155 Ill. 98. *Low* v. *Rees Printing Co.,* 41 Neb. 127. No one can lawfully interfere by force or intimidation to prevent employers or persons employed or wishing to be employed from the exercise of these rights. In Massachusetts, as in some other States, it is even made a criminal offence for one by intimidation or force to prevent or seek

to prevent a person from entering into or continuing in the employment of a person or corporation. Pub. Sts. c. 74, § 2. Intimidation is not limited to threats of violence or of physical injury to person or property. It has a broader signification, and there also may be a moral intimidation which is illegal. Patrolling or picketing, under the circumstances stated in the report, has elements of intimidation like those which were found to exist in *Sherry* v. *Perkins,* 147 Mass. 212. It was declared to be unlawful in *Regina* v. *Druitt,* 10 Cox C. C. 592; *Regina* v. *Hibbert,* 13 Cox C. C. 82; and *Regina* v. *Bauld,* 13 Cox C. C. 282. It was assumed to be unlawful in *Trollope* v. *London Building Trades Federation,* 11 T. L. R. 228, though in that case the pickets were withdrawn before the bringing of the bill. The patrol was an unlawful interference both with the plaintiff and with the workmen, within the principle of many cases, and, when instituted for the purpose of interfering with his business, it became a private nuisance. See *Carew* v. *Rutherford,* 106 Mass. 1; *Walker* v. *Cronin,* 107 Mass. 555; *Barr* v. *Essex Trades Council,* 8 Dick. 101; *Murdock* v. *Walker,* 152 Penn. St. 595; *Wick China Co.* v. *Brown,* 164 Penn. St. 449; *Cœur d' Alene Consolidated & Mining Co.* v. *Miners' Union,* 51 Fed. Rep. 260; *Temperton* v. *Russell* [1893], 1 Q. B. 715; *Flood* v. *Jackson,* 11 L. T. R. 276; *Wright* v. *Hennessey,* a case before Baron Pollock, 52 Alb. L. J. 104; *Judge* v. *Bennett,* 36 W. R. 103; *Lyons* v. *Wilkins* [1896], 1 Ch. 811.

The defendants contend that these acts were justifiable, because they were only seeking to secure better wages for themselves by compelling the plaintiff to accept their schedule of wages. This motive or purpose does not justify maintaining a patrol in front of the plaintiff's premises, as a means of carrying out their conspiracy. A combination among persons merely to regulate their own conduct is within allowable competition, and is lawful, although others may be indirectly affected thereby. But a combination to do injurious acts expressly directed to another, by way of intimidation or constraint, either of himself or of persons employed or seeking to be employed by him, is outside of allowable competition, and is unlawful. Various decided cases fall within the former class, for example: *Worthington* v. *Waring,* 157 Mass. 421; *Snow* v. *Wheeler,* 113 Mass. 179; *Bowen* v. *Mathcson,* 14 Allen, 499; *Commonwealth* v. *Hunt,* 4 Met. 111; *Heywood* v. *Tillson,* 75 Maine, 225; *Cote* v. *Murphy,* 159 Penn. St. 420; *Bohn Manuf. Co.* v. *Hollis,* 54 Minn. 223; *Mogul Steamship Co.* v. *McGregor* [1892], A. C. 25; *Curran* v. *Treleaven* [1891], 2 Q. B. 545, 561. The present case falls within the latter class.

Nor does the fact that the defendants' acts might subject them to an indictment prevent a court of equity from issuing an injunction. It is true that ordinarily a court of equity will decline to issue an injunction to restrain the commission of a crime; but a continuing injury to property or business may be enjoined, although it may also be punishable as a nuisance or other crime. *Sherry* v. *Perkins,* 147 Mass. 212. *In re Debs,* 158 U. S. 564, 593, 599. *Baltimore & Potomac Railroad* v. *Fifth Baptist Church,* 108 U. S. 317, 329. *Cranford* v. *Tyrrell,* 128 N. Y. 341, 344. *Gilbert* v. *Mickle,* 4 Sandf. Ch. 357. *Mobile* v. *Louisville & Nashville Railroad,* 84 Ala. 115, 126. *Arthur* v. *Oakes,* 63 Fed. Rep. 310. *Toledo, Ann Arbor, & North Michigan Railway* v. *Pennsylvania Co.,* 54 Fed. Rep. 730, 744. *Emperor of Austria* v. *Day,* 3 DeG., F. & J. 217, 239, 240, 253. *Hermann Loog* v. *Bean,* 26 Ch. D. 306, 314, 316, 317. *Monson* v. *Tussaud* [1894], 1 Q. B. 671, 689, 690, 698.

A question is also presented whether the court should enjoin such interference with persons in the employment of the plaintiff who are not bound by contract

to remain with him, or with persons who are not under any existing contract, but who are seeking or intending to enter into his employment. A conspiracy to interfere with the plaintiff's business by means of threats and intimidation, and by maintaining a patrol in front of his premises in order to prevent persons from entering his employment, or in order to prevent persons who are in his employment from continuing therein, is unlawful, even though such persons are not bound by contract to enter into or to continue in his employment; and the injunction should not be so limited as to relate only to persons who are bound by existing contracts. *Walker* v. *Cronin,* 107 Mass. 555, 565. *Carew* v. *Rutherford,* 106 Mass. 1. *Sherry* v. *Perkins,* 147 Mass. 212. *Temperton* v. *Russell,* [1893], 1 Q. B. 715, 728, 731. *Flood* v. *Jackson,* 11 L. T. R. 276.

In the opinion of a majority of the court the injunction should be in the form originally issued.

So ordered.

Field, C.J., and Holmes, J., wrote dissenting opinions.

Paul J. Plant *et als. v.* Henry K. Woods *et als.*

Hampden. September 5, 1900.
176 Mass. 492.

Conspiracy by members of labor union to compel others to join union — Coercion and intimidation by threats to employers of strikes and boycotts enjoined.

Bill in equity, filed in the Superior Court, by the officers and members "of the voluntary association known as Union 257, Painters and Decorators of America of Springfield, Massachusetts, which Union is affiliated with a national organization of the same name, with headquarters at Lafayette in the State of Indiana," against the officers and members "of the voluntary association known as Union 257, Painters and Decorators of America, which Union is affiliated with a national organization of the same name, with headquarters at Baltimore in the State of Maryland," to restrain the defendants from any acts or the use of any methods tending to prevent the members of the plaintiff association from securing employment or continuing in their employment. Hearing before *Dewey,* J., who entered the following decree:

"This cause came on to be heard, and was argued by counsel; and thereupon, on consideration thereof, it is ordered, adjudged, and decreed that the defendant association, the defendants, and each and every of them, their committees, agents, and servants, be restrained and strictly enjoined from interfering and from combining, conspiring, or attempting to interfere, with the employment of members of the plaintiffs' said association, by representing or causing to be represented in express or implied terms, to any employer of said members of plaintiffs' association, or to any person or persons or corporation who might become employers of any of the plaintiffs, that such employers will suffer or are likely to suffer some loss or trouble in their business for employing or continuing to employ said members of plaintiffs' said association; or by representing, directly or indirectly, for the purpose of interfering with the employment of members of the plaintiffs' said association, to any who have contracts or may have contracts for services to be performed by employers of members of plaintiffs' said association, that such persons will or are likely to suffer some loss or trouble in their business for allowing such employers of members of plaintiffs' said association (and because they are such employers) to obtain or perform such contracts; or by intimidating, or attempting to intimidate, by threats, direct or indirect, express or implied, of loss or trouble in business, or otherwise, any person or persons or corporation who now are employing or may hereafter employ or desire to employ any of the

members of the plaintiffs' said association; or by attempting by any scheme or conspiracy, among themselves or with others, to annoy, hinder, or interfere with, or prevent any person or persons or corporation from employing or continuing to employ a member or members of plaintiffs' said association; or by causing, or attempting to cause, any person to discriminate against any employer of members of plaintiffs' said association (because he is such employer) in giving or allowing the performance of contracts to or by such employer; and from any and all acts, or the use of any methods, which by putting or attempting to put any person or persons or corporation in fear of loss or trouble, will tend to hinder, impede, or obstruct members, or any member, of the plaintiffs' said association from securing employment or continuing in employment. And that the plaintiffs recover their costs, taxed as in an action of law."

The case was reported, at the request of both parties, for the determination of this court. The facts appear in the opinion.

W. R. Heady (*J. W. Flannery* with him), for the plaintiffs.

W. H. McClintock (*J. B. Carroll* with him), for the defendants.

Hammond, J. This case arises out of a contest for supremacy between two labor unions of the same craft, having substantially the same constitution and by-laws. The chief difference between them is that the plaintiff union is affiliated with a national organization having its headquarters in Lafayette in the State of Indiana, while the defendant union is affiliated with a similar organization having its headquarters in Baltimore in the State of Maryland. The plaintiff union was composed of workmen who in 1897 withdrew from the defendant union.

There does not appear to be anything illegal in the object of either union as expressed in its constitution and by-laws. The defendant union is also represented by delegates in the Central Labor Union, which is an organization composed of five delegates from each trade union in the city of Springfield, and had in its constitution a provision for levying a boycott upon a complaint made by any union.

The case is before us upon a report after a final decree in favor of the plaintiffs, based upon the findings stated in the report of the master.

The contest became active early in the fall of 1898. In September of that year, the members of the defendant union declared "all painters not affiliated with the Baltimore headquarters to be non-union men," and voted to "notify the bosses" of that declaration. The manifest object of the defendants was to have all the members of the craft subjected to the rules and discipline of their particular union, in order that they might have better control over the whole business, and to that end they combined and conspired to get the plaintiffs and each of them to join the defendant association, peaceably if possible, but by threat and intimidation if necessary. Accordingly, on October 7, they voted that "if our demands are not complied with, all men working in shops where Lafayette people are employed refuse to go to work." The plaintiffs resisting whatever persuasive measures, if any, were used by the defendants, the latter proceeded to carry out their plan in the manner fully set forth in the master's report. Without rehearsing the circumstances in detail it is sufficient to say here that the general method of operations was substantially as follows.

A duly authorized agent of the defendants would visit a shop where one or more of the plaintiffs were at work and inform the employer of the action of the defendant union with reference to the plaintiffs, and ask him to induce such of the plaintiffs as were in his employ to sign applications for reinstatement in the defendant union. As

to the general nature of these interviews the master finds that the defendants have been courteous in manner, have made no threats of personal violence, have referred to the plaintiffs as non-union men, but have not otherwise represented them as men lacking good standing in their craft; that they have not asked that the Layafette men be discharged, and in some cases have expressly stated that they did not wish to have them discharged, but only that they sign the blanks for reinstatement in the defendant union. The master, however, further finds, from all the circumstances under which those requests were made, that the defendants intended that employers of Lafayette men should fear trouble in their business if they continued to employ such men, and that employers to whom these requests were made were justified in believing that a failure on the part of their employees who were Lafayette men to sign such reinstatement blanks, and a failure on the part of the employers to discharge them for not doing so, would lead to trouble in the business of the employers in the nature of strikes or a boycott, and the employers to whom these requests were made did believe that such results would follow, and did suggest their belief to the defendants, and the defendants did not deny that such results might occur; that the strikes which did occur appear to have been steps taken by the defendants to obtain the discharge of such employees as were Lafayette men who declined to sign application blanks for reinstatement; that these defendants did not in all cases threaten a boycott of the employers' business, but did threaten that the place of business of at least one such employer would be left off from a so-called "fair list" to be published by the Baltimore Union. The master also found that, from all the evidence presented, the object which the Baltimore men and the defendant association sought to accomplish in all the acts which were testified to was to compel the members of the Lafayette Union to join the Baltimore Union, and as a means to this end they caused strikes to be instituted in the shops where strikes would seriously interfere with the business of the shops, and in all other shops they made such representations as would lead the proprietors thereof to expect trouble in their business.

We have, therefore, a case where the defendants have conspired to compel the members of the plaintiff union to join the defendant union, and to carry out their purpose have resolved upon such coercion and intimidation as naturally may be caused by threats of loss of property by strikes and boycotts, to induce the employers either to get the plaintiffs to ask for reinstatement in the defendant union, or, that failing, then to discharge them. It matters not that this request to discharge has not been expressly made. There can be no doubt, upon the findings of the master and the facts stated in this report, that the compulsory discharge of the plaintiffs in case of non-compliance with the demands of the defendant union is one of the prominent features of the plan agreed upon.

It is well to see what is the meaning of this threat to strike, when taken in connection with the intimation that the employer may "expect trouble in his business." It means more than that the strikers will cease to work. That is only the preliminary skirmish. It means that those who have ceased to work will, by strong, persistent, and organized persuasion and social pressure of every description, do all they can to prevent the employer from procuring workmen to take their places. It means much more. It means that, if these peaceful measures fail, the employer may reasonably expect that unlawful physical injury may be done to his property; that attempts in all the ways practised by organized labor will be made to injure him in his business, even to his ruin, if

possible; and that, by the use of vile and opprobrious epithets and other annoying conduct, and actual and threatened personal violence, attempts will be made to intimidate those who enter or desire to enter his employ; and that whether or not all this be done by the strikers or only by their sympathizers, or with the open sanction and approval of the former, he will have no help from them in his efforts to protect himself.

However mild the language or suave the manner in which the threat to strike is made under such circumstances as are disclosed in this case, the employer knows that he is in danger of passing through such an ordeal as that above described, and those who make the threat know that as well as he does. Even if the intent of the strikers, so far as respects their own conduct and influence, be to discountenance all actual or threatened injury to person or property or business, except that which is the direct necessary result of the interruption of the work, and even if their connection with the injurious and violent conduct of the turbulent among them or of their sympathizers be not such as to make them liable criminally or even answerable civilly in damages to those who suffer, still with full knowledge of what is to be expected they give the signal, and in so doing must be held to avail themselves of the degree of fear and dread which the knowledge of such consequences will cause in the mind of those — whether their employer or fellow workmen — against whom the strike is directed; and the measure of coercion and intimidation imposed upon those against whom the strike is threatened or directed is not fully realized until all those probable consequences are considered.

Such is the nature of the threat, and such the degree of coercion and intimidation involved in it.

If the defendants can lawfully perform the acts complained of in the city of Springfield, they can pursue the plaintiffs all over the State in the same manner, and compel them to abandon their trade or bow to the behests of their pursuers.

It is to be observed that this is not a case between the employer and employed, or, to use a hackneyed expression, between capital and labor, but between laborers all of the same craft, and each having the same right as any one of the others to pursue his calling. In this, as in every other case of equal rights, the right of each individual is to be exercised with due regard to the similar right of all others, and the right of one be said to end where that of another begins.

The right involved is the right to dispose of one's labor with full freedom. This is a legal right, and it is entitled to legal protection. Sir William Erle in his book on Trade Unions, page 12, has stated this in the following language, which has been several times quoted with approval by judges in England: "Every person has a right under the law, as between him and his fellow subjects, to full freedom in disposing of his own labor or his own capital according to his own will. It follows that every other person is subject to the correlative duty arising therefrom, and is prohibited from any obstruction to the fullest exercise of this right which can be made compatible with the exercise of similar rights by others. Every act causing an obstruction to another in the exercise of the right comprised within this description — done, not in the exercise of the actor's own right, but for the purpose of obstruction — would, if damage should be caused thereby to the party obstructed, be a violation of this prohibition."

The same rule is stated with care and discrimination by Wells, J., in *Walker* v. *Cronin*, 107 Mass. 555, 564: "Every one has a right to enjoy the fruits and advantages of his own enterprise, industry, skill and credit. He has no

right to be protected against competition; but he has a right to be free from malicious and wanton interference, disturbance or annoyance. If disturbance, or loss, come as a result of competition, or the exercise of like rights by others, it is *damnum absque injuriâ,* unless some superior right by contract or otherwise is interfered with. But if it come from the merely wanton or malicious acts of others, without the justification of competition or the service of any interest or lawful purpose, it then stands upon a different footing."

In this case the acts complained of were calculated to cause damage to the plaintiffs, and did actually cause such damage; and they were intentionally done for that purpose. Unless, therefore, there was justifiable cause, the acts were malicious and unlawful. *Walker* v. *Cronin, ubi supra. Carew* v. *Rutherford,* 106 Mass. 1, and cases cited therein.

The defendants contend that they have done nothing unlawful, and, in support of that contention, they say that a person may work for whom he pleases; and, in the absence of any contract to the contrary, may cease to work when he pleases, and for any reason whatever, whether the same be good or bad; that he may give notice of his intention in advance, with or without stating the reason; that what one man may do several men acting in concert may do, and may agree beforehand that they will do, and may give notice of the agreement; and that all this may be lawfully done notwithstanding such considered action may, by reason of the consequent interruption of the work, result in great loss to the employer and his other employees, and that such a result was intended. In a general sense, and without reference to exceptions arising out of conflicting public and private interests, all this may be true.

It is said also that, where one has the lawful right to do a thing, the motive by which he is actuated is immaterial. One form of this statement appears in the first head-note in *Allen* v. *Flood,* as reported in [1898] A. C. 1, as follows: "An act lawful in itself is not converted by a malicious or bad motive into an unlawful act so as to make the doer of the act liable to a civil action." If the meaning of this and similar expressions is that where a person has the lawful right to do a thing irrespective of his motive, his motive is immaterial, the proposition is a mere truism. If, however, the meaning is that where a person, if actuated by one kind of a motive, has a lawful right to do a thing, the act is lawful when done under any conceivable motive, or that an act lawful under one set of circumstances is therefore lawful under every conceivable set of circumstances, the proposition does not commend itself to us as either logically or legally accurate.

In so far as a right is lawful, it is lawful, and in many cases the right is so far absolute as to be lawful whatever may be the motive of the actor, as where one digs upon his own land for water (*Greenleaf* v. *Francis,* 18 Pick. 117), or makes a written lease of his land for the purpose of terminating a tenancy at will (*Groustra* v. *Bourges,* 141 Mass. 7), but in many cases the lawfulness of an act which causes damage to another may depend upon whether the act is for justifiable cause; and this justification may be found sometimes in the circumstances under which it is done irrespective of motive, sometimes in the motive alone, and sometimes in the circumstances and motive combined.

This principle is of very general application in criminal law, and also is illustrated in many branches of the civil law, as in cases of libel and of procuring a wife to leave her husband. *Tasker* v. *Stanley,* 153 Mass. 148, and cases therein cited. Indeed the principle is a prominent feature underlying the whole doctrine of privilege, malice, and intent. See on this an instructive article in 8 Harvard Law Review, 1, where

the subject is considered at some length.

It is manifest that not much progress is made by such general statements as those quoted above from *Allen* v. *Flood,* whatever may be their meaning.

Still standing for solution is the question, Under what circumstances, including the motive of the actor, is the act complained of lawful, and to what extent?

In cases somewhat akin to the one at bar this court has had occasion to consider the question how far acts, manifestly coercive and intimidating in their nature, which cause damage and injury to the business or property of another, and are done with intent to cause such injury and partly in reliance upon such coercion, are justifiable.

In *Bowen* v. *Matheson,* 14 Allen, 499, it was held to be lawful for persons engaged in the business of shipping seamen to combine together into a society for the purpose of competing with other persons engaged in the same business, and it was held lawful for them, in pursuance of that purpose, to take men out of a ship, if men shipped by a non-member were in that ship; to refuse to furnish seamen through a non-member; to notify the public that they had combined against non-members, and had "laid the plaintiff on the shelf"; to notify the plaintiff's customers and friends that the plaintiff could not ship seamen for them; and to interfere in all these ways with the business of the plaintiff as a shipping agent, and compel him to abandon the same. The justification for these acts, so injurious to the business of the plaintiff and so intimidating in their nature, is to be found in the law of competition. No legal right of the plaintiff was infringed upon, and, as stated by Chapman, J., in giving the opinion of the court (p. 503), "if their effect is to destroy the business of shipping-masters who are not members of the association, it is such a result as in the competition of business often follows from a course of proceedings that the law permits." The primary object of the defendants was to build up their own business, and this they might lawfully do to the extent disclosed in that case, even to the injury of their rivals.

Similar decisions have been made in other courts where acts somewhat coercive in their nature and effect have been held justifiable under the law of competition. *Mogul Steamship Co.* v. *McGregor* [1892], A. C. 25. *Bohn Manuf. Co.* v. *Hollis,* 54 Minn. 223. *Macauley* v. *Tierney,* 19 R. I. 255.

On the other hand, it was held in *Carew* v. *Rutherford,* 106 Mass. 1, that a conspiracy against a mechanic, — who is under the necessity of employing workmen in order to carry on his business, — to obtain a sum of money from him which he is under no legal obligation to pay, by inducing his workmen to leave him, or by deterring others from entering into his employ, or by threatening to do this so that he is induced to pay the money demanded, under a reasonable apprehension that he cannot carry on his business without yielding to the demands, is an illegal, if not a criminal, conspiracy; that the acts done under it are illegal, and that the money thus obtained may be recovered back. Chapman, C.J., speaking for the court, says that there is no doubt that, if the parties under such circumstances succeed in injuring the business of the mechanic, they are liable to pay all the damages done to him.

That case bears a close analogy to the one at bar. The acts there threatened were like those in this case, and the purpose was, in substance, to force the plaintiff to give his work to the defendants, and to extort from him a fine because he had given some of his work to other persons.

Without now indicating to what extent workmen may combine and in pursuance of an agreement may act by means

of strikes and boycotts to get the hours of labor reduced or their wages increased, or to procure from their employers any other concession directly and immediately affecting their own interests, or to help themselves in competition with their fellow-workmen, we think this case must be governed by the principles laid down in *Carew* v. *Rutherford, ubi supra.* The purpose of these defendants was to force the plaintiffs to join the defendant association, and to that end they injured the plaintiffs in their business, and molested and disturbed them in their efforts to work at their trade. It is true they committed no acts of personal violence, or of physical injury to property, although they threatened to do something which might reasonably be expected to lead to such results. In their threat, however, there was plainly that which was coercive in its effect upon the will. It is not necessary that the liberty of the body should be restrained. Restraint of the mind, provided it would be such as would be likely to force a man against his will to grant the thing demanded, and actually has that effect, is sufficient in cases like this. As stated by Lord Bramwell in *Regina* v. *Druitt,* 10 Cox C. C. 592, 600, "No right of property, or capital, . . . was so sacred, or so carefully guarded by the law of this land, as that of personal liberty. . . . That liberty was not liberty of the body only. It was also a liberty of the mind and will; and the liberty of a man's mind and will, to say how he should bestow himself and his means, his talents, and his industry, was as much a subject of the law's protection as was that of his body."

It was not the intention of the defendants to give fairly to the employer the option to employ them or the plaintiffs, but to compel the latter against their will to join the association, and to that end to molest and interfere with them in their efforts to procure work by acts and threats well calculated by their coercive and intimidating nature to overcome the will.

The defendants might make such lawful rules as they please for the regulation of their own conduct, but they had no right to force other persons to join them.

The necessity that the plaintiffs should join this association is not so great, nor is its relation to the rights of the defendants, as compared with the right of the plaintiffs to be free from molestation, such as to bring the acts of the defendants under the shelter of the principles of trade competition. Such acts are without justification, and therefore are malicious and unlawful, and the conspiracy thus to force the plaintiffs was unlawful. Such conduct is intolerable, and inconsistent with the spirit of our laws.

The language used by this court in *Carew* v. *Rutherford,* 106 Mass. 1, 15, may be repeated here with emphasis, as applicable to this case: "The acts alleged and proved in this case are peculiarly offensive to the free principles which prevail in this country; and if such practices could enjoy impunity, they would tend to establish a tyranny of irresponsible persons over labor and mechanical business which would be extremely injurious to both." See, in addition to the authorities above cited, *Commonwealth* v. *Hunt,* 4 Met. 111; *Sherry* v. *Perkins,* 147 Mass. 212, 214; *Vegelahn* v. *Guntner,* 167 Mass. 92, 97; St. 1894, c. 508, § 2;[1] *State* v. *Donaldson,* 3 Vroom, 151; *State* v. *Stewart,* 59 Vt. 273; *State* v. *Glidden,* 55 Conn. 46; *State* v. *Dyer,* 67 Vt. 690; *Lucke* v. *Clothing Cutters & Trimmers' Assembly,* 77 Md. 396.

As the plaintiffs have been injured by these acts, and there is reason to

[1] This section is as follows: "No person shall, by intimidation or force, prevent or seek to prevent a person from entering into or continuing in the employment of any person or corporation."

believe that the defendants contemplate further proceedings of the same kind which will be likely still more to injure the plaintiffs, a bill in equity lies to enjoin the defendants. *Vegelahn* v. *Guntner, ubi supra.*

Some phases of the labor question have recently been discussed in the very elaborately considered case of *Allen* v. *Flood, ubi supra.* Whether or not the decision made therein is inconsistent with the propositions upon which we base our decision in this case, we are not disposed, in view of the circumstances under which that decision was made, to follow it. We prefer the view expressed by the dissenting judges, which view, it may be remarked, was entertained not only by three of the nine lords who sat in the case, but also by the great majority of the common law judges who had occasion officially to express an opinion.

There must be, therefore, a decree for the plaintiffs. We think, however, that the clause, "or by causing or attempting to cause, any person to discriminate against any employer of members of plaintiffs' said association (because he is such employer) in giving or allowing the performance of contracts to or by such employer," is too broad and indefinite, inasmuch as it might seem to include mere lawful persuasion and other similar and peaceful acts; and for that reason, and also because so far as respects unlawful acts it seems to cover only such acts as are prohibited by other parts of the decree, we think it should be omitted.

Inasmuch as the association of the defendants is not a corporation, an injunction cannot be issued against it as such, but only against its members, their agents and servants.

As thus modified, in the opinion of the majority of the court, the decree should stand.

Decree accordingly.

Holmes, C.J., wrote a dissenting opinion.

Moran *v.* Dunphy.

Fred A. Moran *v.* John Dunphy.

Suffolk. January 4, 1901.

177 Mass. 485.

Recovery allowed for maliciously inducing employer to discharge employee.

Tort, for maliciously inducing one Robert J. Cowan to discharge the plaintiff from his employ. Writ dated December 19, 1899.

The case came up on an appeal from a judgment of the Superior Court rendered by *Braley,* J., sustaining the defendant's demurrer to the declaration. The declaration was in two counts and alleged in substance that the plaintiff had been, in the employ of one Robert J. Cowan, under an oral contract between said Cowan and himself; that while he was still in said employ, the defendant, with intent to injure him, did maliciously, wilfully, and wrongfully induce the said Cowan to discharge him from his employ and to refuse to engage his services any longer; that said Cowan did discharge him at the defendant's instigation; whereby the plaintiff suffered great loss and damage."

J. H. Hickey, for the plaintiff.

C. F. Eldredge, for the defendant.

Holmes, C.J. The first count of the declaration in this case substantially follows the form held bad in *May* v. *Wood,* 172 Mass. 11, and *Rice* v. *Albee,* 164 Mass. 88, and the plaintiff's argument is directed to getting those cases overruled. It appears in the reports that the later decision did not command the assent of all of us, and it is quite possible at least that if the question came up now for the first time the majority might be found to be on the side which did not prevail. *Van Horn* v. *Van Horn,* 27 Vroom, 318, 319. But it is not desirable that decisions should oscillate with changes in the bench, and we accept what was decided as the law. Still we deem it proper to call attention to the fact that the cases cited go only to a point of pleading. What they decide, so far as they bear on the present case, is merely that the substance of

false statements by which a defendant is alleged to have induced a third person to break or end his contract must be set out. That we accept. But in view of the series of decisions by this court from *Walker* v. *Cronin,* 107 Mass. 555, through *Morasse* v. *Brochu,* 151 Mass. 567, *Tasker* v. *Stanley,* 153 Mass. 148, *Vegelahn* v. *Guntner,* 167 Mass. 92, *Hartnett* v. *Plumbers' Supply Association,* 169 Mass. 229, and *Weston* v. *Barnicoat,* 175 Mass. 454, to *Plant* v. *Woods,* 176 Mass. 492, we cannot admit a doubt that maliciously and without justifiable cause to induce a third person to end his employment of the plaintiff, whether the inducement be false slanders or successful persuasion, is an actionable tort. See also *Angle* v. *Chicago, St. Paul, Minneapolis, & Omaha Railway,* 151 U. S. 1, 13.

We apprehend that there no longer is any difficulty in recognizing that a right to be protected from malicious interference may be incident to a right arising out of a contract, although a contract, so far as performance is concerned, imposes a duty only on the promisor. Again, in the case of a contract of employment, even when the employment is at will, the fact that the employer is free from liability for discharging the plaintiff does not carry with it immunity to the defendant who has controlled the employer's action to the plaintiff's harm. The notion that the employer's immunity must be a non-conductor so far as any remoter liability was concerned, troubled some of the judges in *Allen* v. *Flood* [1898], A. C. 1, but is disposed of for this Commonwealth by the cases cited. See also *May* v. *Wood,* 172 Mass. 11, 14, 15. So again it may be taken to be settled by *Plant* v. *Woods,* 176 Mass. 492, 501, 502, that motives may determine the question of liability; that while intentional interference of the kind supposed may be privileged if for certain purposes, yet if due only to malevolence it must be answered for. On that point the judges were of one mind. See p. 504. Finally, we see no sound distinction between persuading by malevolent advice and accomplishing the same result by falsehood or putting in fear. In all these cases the employer is controlled through motives created by the defendant for the unprivileged purpose. It appears to us not to matter which motive is relied upon. If accomplishing the end by one of them is a wrong to the plaintiff, accomplishing it by either of the others must be equally a wrong.

It follows from what we have said that we are of opinion that both counts of the declaration disclose a good cause of action, although the first on the authority of *May* v. *Wood* must be held insufficient in point of form. The second is not within the authority or reason of that case, 172 Mass. 14, and is in a form similar to the third count which was held good in *Walker* v. *Cronin.* See *Lumley* v. *Gye,* 2 El. & Bl. 216. As to that the demurrer will be overruled. Assuming that the demurrer was intended to be a demurrer to each count as well as to the declaration, it will be sustained as to the first count, but it seems to us that under the circumstances the plaintiff should be given an opportunity to amend.

Demurrer to first count sustained; demurrer to second count overruled.

FRED MARTELL *v.* JAMES N. WHITE *et als.*

NORFOLK. MARCH 1, 1904.

185 Mass. 255.

Agreement under penalty of fine not to trade with those not members of Granite Workers Association declared unlawful.

Tort for an alleged conspiracy to injure the plaintiff in his business of quarrying and selling granite, carried on by him at Quincy. Writ dated March 9, 1899.

E. R. Anderson, for the plaintiff.

J. W. McAnarney (*J. E. Cotter* with him), for the defendants.

Hammond, J. The evidence warranted the finding of the following facts, many of which were not in dispute. The plaintiff was engaged in a profitable business in quarrying granite and selling the same to granite workers in Quincy and vicinity. About January, 1899, his customers left him, and his business was ruined through the action of the defendants and their associates.

The defendants were all members of a voluntary association known as the Granite Manufacturers' Association of Quincy, Massachusetts, and some of them were on the executive committee. The association was composed of "such individuals, firms, or corporations as are, or are about to become manufacturers, quarriers, or polishers of granite." There was no constitution and, while there were by-laws, still, except as hereinafter stated, there was in them no statement of the objects for which the association was formed. The by-laws provided among other things for the admission, suspension and expulsion of members, the election of officers, including an executive committee, and defined the respective powers and duties of the officers. One of the by-laws read as follows: "For the purpose of defraying in part the expense of the maintenance of this organization, any member hereof having business transactions with any party or concern in Quincy or its vicinity, not members hereof, and in any way relating to the cutting, quarrying, polishing, buying or selling of granite (hand polishers excepted) shall for each of said transactions contribute at least $1 and not more than $500. The amount to be fixed by the Association upon its determining the amount and nature of said transaction."

Acting under the by-laws, the association investigated charges which were made against several of its members that they had purchased granite from a party "not a member" of the association. The charges were proved, and under the section above quoted it was voted that the offending parties should respectively "contribute to the funds of the association" the sums named in the votes. These sums ranged from $10 to $100. Only the contribution of $100 has been paid, but it is a fair inference that the proceedings to collect the others have been delayed only by reason of this suit. The party "not a member" was the present plaintiff, and the members of the association knew it. Most of the customers of the plaintiff were members of the association, and after these proceedings they declined to deal with him. This action on their part was due to the course of the association in compelling them to contribute as above stated, and to their fear that a similar vote for contribution would be passed should they continue to trade with the plaintiff.

The jury might properly have found also that the euphemistic expression "shall . . . contribute" to the funds of the association contained an idea which could be more tersely and accurately expressed by the phrase "shall pay a fine," or, in other words, that the plain intent of the section was to provide for the imposition upon those who came within its provisions of a penalty in the nature of a substantial fine. The bill of exceptions recites that "there was no evidence of threats or intimidation practised upon the plaintiff himself, and the acts complained of were confined to the action of the society upon its own members." We understand this statement to mean simply that the acts of the association concerned only such of the plaintiff's customers as were members, and that no pressure was brought to bear upon the plaintiff except such as fairly resulted from action upon his customers. While it is true that the by-law was not directed expressly against the plaintiff by name, still he belonged to the class whose busi-

ness it was intended to affect, and the proceedings actually taken were based upon transactions with him alone, and in that way were directed against him alone. It was the intention of the defendants to withdraw his customers from him, if possible, by the imposition of fines upon them, with the knowledge that the result would be a great loss to the plaintiff. The defendants must be presumed to have intended the natural result of their acts.

Here, then, is a clear and deliberate interference with the business of a person with the intention of causing damage to him and ending in that result. The defendants combined and conspired together to ruin the plaintiff in his business, and they accomplished their purpose. In all this have they kept within lawful bounds?

It is elemental that the unlawfulness of a conspiracy may be found either in the end sought or the means to be used. If either is unlawful within the meaning of the term as applied to the subject, then the conspiracy is unlawful. It becomes necessary, therefore, to examine into the nature of the conspiracy in this case, both as to the object sought and the means used.

The case presents one phase of a general subject which gravely concerns the interests of the business world and indeed those of all organized society, and which in recent years has demanded and received great consideration in the courts and elsewhere. Much remains to be done to clear the atmosphere, but some things at least appear to have been settled, and certainly at this stage of the judicial inquiry it cannot be necessary to enter upon a course of reasoning or to cite authorities in support of the proposition that while a person must submit to competition he has the right to be protected from malicious interference with his business. The rule is well stated in *Walker* v. *Cronin,* 107 Mass. 555, 564, in the following language: "Every one has a right to enjoy the fruits and advantages of his own enterprise, industry, skill and credit. He has no right to be protected against competition; but he has a right to be free from malicious and wanton interference, disturbance or annoyance. If disturbance or loss come as a result of competition, or the exercise of like rights by others, it is *damnum absque injuriâ,* unless some superior right by contract or otherwise is interfered with. But if it come from the merely wanton or malicious acts of others, without the justification of competition or the service of any interest or lawful purpose, it then stands upon a different footing."

In a case like this, where the injury is intentionally inflicted, the crucial question is whether there is justifiable cause for the act. If the injury be inflicted without just cause or excuse, then it is actionable. Bowen, L.J. in *Mogul Steamship Co.* v. *McGregor,* 23 Q. B. D. 598, 613. *Plant* v. *Woods,* 176 Mass. 492. The justification must be as broad as the act and must cover not only the motive and the purpose, or in other words the object sought, but also the means used.

The defendants contend that both as to object and means they are justified by the law applicable to business competition. In considering this defence it is to be remembered, as was said by Bowen, L.J. in *Mogul Steamship Co.* v. *McGregor,* 23 Q. B. D. 598, 611, that there is presented "an apparent conflict or antinomy between two rights that are equally regarded by the law — the right of the plaintiffs to be protected in the legitimate exercise of their trade, and the right of the defendants to carry on their business as seems best to them, provided they commit no wrong to others." Here, as in most cases where there is a conflict between two important principles, either of which is sound and to be sustained within proper bounds, but each of which must finally yield to some extent to the other, it frequently is not possible by a general formula to

mark out the dividing line with reference to every conceivable case, and it is not wise to attempt it. The best and only practicable course is to consider the cases as they arise, and, bearing in mind the grounds upon which the soundness of each principle is supposed to rest, by a process of elimination and comparison to establish points through which at least the line must run and beyond which the party charged with trespass shall not be allowed to go.

While the purpose to injure the plaintiff appears clearly enough, the object or motive is left somewhat obscure upon the evidence. The association had no written constitution, and the by-laws do not expressly set forth its objects. It is true that from the by-laws it appears that none but persons engaged in the granite business can be members, and that a member transacting any business of this kind with a person not a member is liable to a fine; from which it may be inferred that it is the idea of the members that for the protection of their business it would be well to confine it to transactions among themselves, and that one at least of the objects of the association is to advance the interests of the members in that way. The oral testimony tends to show that one object of the association is to see that agreements made between its members and their employees and between this association and similar associations in the same line of business be kept and "lived up to." Whether this failure to set out fully in writing the objects is due to any reluctance to have them clearly appear, or to some other cause, is of course not material to this case. The result, however, is that its objects do not so clearly appear as might be desired; but in view of the conclusion to which we have come as to the means used, it is not necessary to inquire more closely as to the objects. It may be assumed that one of the objects was to enable the members to compete more successfully with others in the same business, and that the acts of which the plaintiff complains were done for the ultimate protection and advancement of their own business interests, with no intention or desire to injure the plaintiff except so far as such injury was the necessary result of measures taken for their own interests. If that was true, then so far as respects the end sought the conspiracy does not seem to have been illegal.

The next question is whether there is anything unlawful or wrongful in the means used as applied to the acts in question. Nothing need be said in support of the general right to compete. To what extent combination may be allowed in competition is a matter about which there is as yet much conflict, but it is possible that in a more advanced stage of the discussion the day may come when it will be more clearly seen and will more distinctly appear in the adjudication of the courts than as yet has been the case, that the proposition that what one man lawfully can do any number of men acting together by combined agreement lawfully may do, is to be received with newly disclosed qualifications arising out of the changed conditions of civilized life and of the increased facility and power of organized combination, and that the difference between the power of individuals acting each according to his own preference and that of an organized and extensive combination may be so great in its effect upon public and private interests as to cease to be simply one of degree and to reach the dignity of a difference in kind. Indeed, in the language of Bowen, L.J. in the *Mogul Steamship* case, *ubi supra,* page 616: "Of the general proposition, that certain kinds of conduct not criminal in any one individual may become criminal if done by combination among several, there can be no doubt. The distinction is based on sound reason, for a combination may make oppressive or dangerous that which if it proceeded only from a single person would be otherwise, and the very

fact of the combination may show that the object is simply to do harm, and not to exercise one's own just rights." See also opinion of Stirling, L.J. in *Giblan* v. *National Amalgamated Labourers' Union* [1903], 2 K. B. 600, 621. Speaking generally, however, competition in business is permitted, although frequently disastrous to those engaged in it. It is always selfish, often sharp, and sometimes deadly. Conspicuous illustrations of the destructive extent to which it may be carried are to be found in the *Mogul Steamship* case above cited, and in *Bowen* v. *Matheson,* 14 Allen, 499. The fact therefore that the plaintiff was vanquished is not enough, provided that the contest was carried on within the rules allowable in such warfare.

It is a right, however, which is to be exercised with reference to the existence of a similar right on the part of others. The trader has not a free lance. Fight he may, but as a soldier, not as a guerilla. The right of competition rests upon the doctrine that the interests of the great public are best subserved by permitting the general and natural laws of business to have their full and free operation, and that this end is best attained when the trader is allowed in his business to make free use of these laws. He may praise his wares, may offer more advantageous terms than his rival, may sell at less than cost, or, in the words of Bowen, L.J. in the *Mogul Steamship* case, *ubi supra,* may adopt "the expedient of sowing one year a crop of apparently unfruitful prices, in order by driving competition away to reap a fuller harvest of profit in the future." In these and many other obvious ways he may secure the customers of his rival, and build up his own business to the destruction of that of others, and so long as he keeps within the operation of the laws of trade his justification is complete.

But from the very nature of the case it is manifest that the right of competition furnishes no justification for an act done by the use of means which in their nature are in violation of the principle upon which it rests. The weapons used by the trader who relies upon this right for justification must be those furnished by the laws of trade, or at least must not be inconsistent with their free operation. No man can justify an interference with another man's business through fraud or misrepresentation, nor by intimidation, obstruction or molestation. In the case before us the members of the association were to be held to the policy of refusing to trade with the plaintiff by the imposition of heavy fines, or in other words they were coerced by actual or threatened injury to their property. It is true that one may leave the association if he desires, but if he stays in it he is subjected to the coercive effect of a fine to be determined and enforced by the majority. This method of procedure is arbitrary and artificial, and is based in no respect upon the grounds upon which competition in business is permitted, but on the contrary it creates a motive for business action inconsistent with that freedom of choice out of which springs the benefit of competition to the public, and has no natural or logical relation to the grounds upon which the right to compete is based. Such a method of influencing a person may be coercive and illegal. *Carew* v. *Rutherford,* 106 Mass. 1.

Nor is the nature of the coercion changed by the fact that the persons fined were members of the association. The words of Munson, J. in *Boutwell* v. *Marr,* 71 Vt. 1, 9, are applicable here: "The law cannot be compelled by any initial agreement of an associate member to treat him as one having no choice but that of the majority, nor as a willing participant in whatever action may be taken. The voluntary acceptance of by-laws providing for the imposition of coercive fines does not make them legal

and collectible, and the standing threat of their imposition may properly be classed with the ordinary threat of suits upon groundless claims. The fact that the relations and processes deemed essential to a recovery are brought within the membership and proceedings of an organized body, cannot change the result. The law sees in the membership of an association of this character both the authors of its coercive system and the victims of its unlawful pressure. If this were not so, men could deprive their fellows of established rights, and evade the duty of compensation, simply by working through an association."

In view of the considerations upon which the right of competition is based, we are of opinion that as against the plaintiff the defendants have failed to show that the coercion or intimidation of the plaintiff's customers by means of a fine is justified by the law of competition. The ground of the justification is not broad enough to cover the acts of interference in their entirety, and the interference, being injurious and unjustifiable, is unlawful.

We do not mean to be understood as saying that a fine is of itself necessarily, or even generally, an illegal instrument. In many cases it is so slight as not to be coercive in its nature; in many it serves a useful purpose to call the attention of a member of an organization to the fact of the infraction of some innocent regulation; and in many it serves as an extra incentive to the performance of some absolute duty or the assertion of some absolute right. But where, as in the case before us, the fine is so large as to amount to moral intimidation or coercion, and is used as a means to enforce a right not absolute in its nature but conditional, and is inconsistent with the conditions upon which the right rests, then the coercion becomes unjustifiable and taints with illegality the act.

The defendants strongly rely upon *Bowen* v. *Matheson,* 14 Allen, 499, *Mogul Steamship Co.* v. *McGregor* [1892], A. C. 25, *Bohn Manuf. Co.* v. *Hollis,* 54 Minn. 223, *Macauley Brothers* v. *Tierney,* 19 R. I. 255, and *Cote* v. *Murphy,* 159 Penn. St. 420. In none of these cases was there any coercion by means of fines upon those who traded with the plaintiff. Inducements were held out, but they were such as are naturally incident to competition, for instance, more advantageous terms in the way of discounts, increased trade, and otherwise. In the Minnesota case there was among the rules of the association a clause requiring the plaintiff to pay ten per cent, but the propriety or the legality of that provision was not involved. In *Bowen* v. *Matheson,* it is true that the by-laws provided for a fine, but the declaration did not charge that any coercion by means of a fine had been used. A demurrer to the declaration was sustained upon the ground that there was no sufficient allegation of an illegal act. The only allegation which need be noticed here was that the defendants "did prevent men from shipping with" the plaintiff, and as to this the court said: "This might be done in many ways which are lawful and proper, and as no illegal methods are stated the allegation is bad." This comes far short of sustaining the defendants in their course of coercion by means of fines. As to the other cases cited by the defendant it may be said that, while bearing upon the general subject of which the present case presents one phase, they are not inconsistent with the conclusion to which we have come. Among the authorities bearing upon the general subject and having some relation to the questions involved in this case, see, in addition to those hereinbefore cited, *Slaughter-House cases,* 16 Wall. 36, 116; *Addyston Pipe & Steel Co.* v. *United States,* 175 U. S. 211; *Doremus* v. *Hennessy,* 176 Ill. 608; *Inter-Ocean Publishing Co.* v. *Associated Press,* 184 Ill. 438; *State* v. *Stewart,* 59 Vt. 273; *Olive* v. *Van Patten,* 7 Tex. App. 630;

Barr v. *Essex Trades Council,* 8 Dick. 101; *Jackson* v. *Stanfield,* 137 Ind. 592; *Bailey* v. *Master Plumbers,* 103 Tenn. 99; *Brown* v. *Jacobs' Pharmacy Co.,* 115 Ga. 429; *Mogul Steamship Co.* v. *McGregor,* 15 Q. B. D. 476; 21 Q. B. D. 544; 23 Q. B. D. 598; [1892] A. C. 25.

For the reasons above stated, a majority of the court are of opinion that the case should have been submitted to the jury. *Exceptions sustained.*

MICHAEL T. BERRY *v.* JERRY E. DONOVAN.

ESSEX. JUNE 20, 1905.

188 Mass. 353.

Agreement by employer to employ only union men. Procurement of discharge of non-union men.

KNOWLTON, C.J. This is an action of tort brought to recover damages sustained by reason of the defendant's malicious interference with the plaintiff's contract of employment. The plaintiff was a shoemaker, employed by the firm of Hazen B. Goodrich and Company at Haverhill, Massachusetts, under a contract terminable at will. At the time of the interference complained of he had been so employed nearly four years. The defendant was the representative at Haverhill of a national organization of shoe workers, called the Boot and Shoe Workers' Union, of which he was also a member. The evidence showed that he induced Goodrich and Company to discharge the plaintiff, greatly to his damage. A few days before the plaintiff's discharge, a contract was entered into between the Boot and Shoe Workers' Union and the firm of Goodrich and Company, which was signed by the defendant for the union, the second clause of which was as follows: "In consideration of the foregoing valuable privileges, the employer agrees to hire as shoe workers, only members of the Boot and Shoe Workers' Union, in good standing, and further agrees not to retain any shoe worker in his employment after receiving notice from the union that such shoe worker is objectionable to the union, either on account of being in arrears for dues, or disobedience of union rules or laws, or from any other cause." The contract contained various other provisions in regard to the employment of members of the union by the firm, and the rights of the firm and of the union in reference to the services of these employees, and the use of the union's stamp upon goods to be manufactured.

The plaintiff was not a member of this union. Soon after the execution of this contract, the defendant demanded of Goodrich and Company that the plaintiff be discharged, and the evidence tended to show that the sole ground for the demand was that the plaintiff was not a member of the union, and that he persistently declined to join it, after repeated suggestions that he should do so.

At the close of the evidence the defendant asked for the following instructions which the judge declined to give:

"1. Upon all the evidence in the case, the plaintiff is not entitled to recover.

"2. Upon all the evidence in the case, the defendant was acting as the legal representative of the Boot and Shoe Workers' Union and not in his personal capacity, and therefore the plaintiff cannot recover.

"3. The contract between the Boot and Shoe Workers' Union and Hazen B. Goodrich and Company was a valid contract, and the defendant, as the legal representative of the Boot and Shoe Workers' Union, had a right to call the attention of Hazen B. Goodrich and Company, or any member of the firm, to the fact that they were violating the terms of the contract in keeping the plaintiff in their employment after the contract was signed, and insisting upon an observance of the terms of the contract, even if the defendant knew

that the observance of the terms of the contract would result in the discharge of the plaintiff from their employment.

"4. The contract referred to was a legal contract, and a justification of the acts of the defendant, as shown by the evidence in this case.

"6. The defendant cannot be held responsible in this action, unless it appears that the defendant used threats, or some act of intimidation, or some slanderous statements, or some unlawful coercion to or against the employers of the plaintiff, to thereby cause the plaintiff's discharge; and upon all the evidence in the case there is no such evidence, and the plaintiff cannot recover."

The defendant excepted to the refusal, and to the portions of the charge which were inconsistent with the instructions requested. The jury returned a verdict of $1,500 for the plaintiff. These exceptions present the only questions which were argued before us by the defendant.

The primary right of the plaintiff to have the benefit of his contract and to remain undisturbed in the performance of it is universally recognized. The right to dispose of one's labor as he will, and to have the benefit of one's lawful contract, is incident to the freedom of the individual, which lies at the foundation of the government in all countries that maintain the principles of civil liberty. Such a right can lawfully be interfered with only by one who is acting in the exercise of an equal or superior right which comes in conflict with the other. An intentional interference with such a right, without lawful justification, is malicious in law, even if it is from good motives and without express malice. *Walker* v. *Cronin,* 107 Mass. 555, 562. *Plant* v. *Woods,* 176 Mass. 492, 498. *Allen* v. *Flood* [1898], A. C. 1, 18. *Mogul Steamship Co.* v. *McGregor,* 23 Q. B. D. 598, 613. *Read* v. *Friendly Society of Operative Stonemasons* [1902], 2 K. B. 88, 96. *Giblan* v. *National Amalgamated Labourers' Union* [1903], 2 K. B. 600, 617.

In the present case the judge submitted to the jury, first, the question whether the defendant interfered with the plaintiff's rights under his contract with Goodrich and Company, and secondly, the question whether, if he did, the interference was without justifiable cause. The jury were instructed that, unless the defendant's interference directly caused the termination of the plaintiff's employment, there could be no recovery. The substance of the defendant's contention was, that if he acted under the contract between the Boot and Shoe Workers' Union and the employer in procuring the plaintiff's discharge, his interference was lawful.

This contention brings us to an examination of the contract. That part which relates to the persons to be employed contains, first, a provision that the employer will hire only members of the union. This has no application to the plaintiff's case, for it is an agreement only for the future, and the plaintiff had been hired a long time before. The next provision is, that the employer will not retain in his employment a worker, after receiving notice that he is objectionable to the union, "either on account of being in arrears for dues, or disobedience of union rules or laws, or from any other cause." The first two possible causes for objection could not be applied to persons in the situation of the plaintiff, who were not members of the union or amenable to its laws. As to such persons, the only provision applicable was that the firm would not retain a worker who was objectionable to the union from any cause, however arbitrary the objection, or unreasonable the cause might be. This provision purported to authorize the union to interfere and deprive any workman of his employment for no reason whatever, in the arbitrary exercise of its power. Whatever the contracting parties may do if no one but

themselves is concerned, it is evident that, as against the workman, a contract of this kind does not of itself justify interference with his employment, by a third person who made the contract with his employer. *Curran* v. *Galen,* 152 N. Y. 33. No one can legally interfere with the employment of another, unless in the exercise of some right of his own, which the law respects. His will so to interfere for his own gratification is not such a right.

The judge rightly left to the jury the question whether, in view of all the circumstances, the interference was or was not for a justifiable cause. If the plaintiff's habits, or conduct, or character had been such as to render him an unfit associate, in the shop, for ordinary workmen of good character, that would have been a sufficient reason for interference in behalf of his shopmates. We can conceive of other good reasons. But the evidence tended to show that the only reason for procuring his discharge was his refusal to join the union. The question, therefore, is whether the jury might find that such an interference was unlawful.

The only argument that we have heard in support of interference by labor unions, in cases of this kind, is that it is justifiable as a kind of competition. It is true that fair competition in business brings persons into rivalry, and often justifies action for one's self, which interferes with proper action of another. Such action, on both sides, is the exercise by competing persons of equal conflicting rights. The principle appealed to would justify a member of the union, who was seeking employment for himself, in making an offer to serve on such terms as would result, and as he knew would result, in the discharge of the plaintiff by his employer, to make a place for the new comer. Such an offer, for such a purpose, would be unobjectionable. It would be merely the exercise of a personal right, equal in importance to the plaintiff's right. But an interference by a combination of persons, to obtain the discharge of a workman because he refuses to comply with their wishes, for their advantage, in some matter in which he has a right to act independently, is not competition. In such a case the action taken by the combination is not in the regular course of their business as employees, either in the service in which they are engaged, or in an effort to obtain employment in other service. The result which they seek to obtain cannot come directly from anything that they do within the regular line of their business as workers competing in the labor market. It can come only from action outside of the province of workingmen, intended directly to injure another, for the purpose of compelling him to submit to their dictation.

It is difficult to see how the object to be gained can come within the field of fair competition. If we consider it in reference to the right of employees to compete with one another, inducing a person to join a union has no tendency to aid them in such competition. Indeed the object of organizations of this kind is not to make competition of employees with one another more easy or successful. It is rather, by association, to prevent such competition, to bring all to equality, and to make them act together in a common interest. Plainly then, interference with one working under a contract, with a view to compel him to join a union, cannot be justified as a part of the competition of workmen with one another.

We understand that the attempted justification rests entirely upon another kind of so called competition, namely, competition between employers and the employed, in the attempt of each class to obtain as large a share as possible of the income from their combined efforts in the industrial field. In a strict sense, this is hardly competition. It is a struggle or contention of interests of different kinds, which are in opposition,

so far as the division of profits is concerned. In a broad sense, perhaps the contending forces may be called competitors. At all events, we may assume that, as between themselves, the principle which warrants competition permits also reasonable efforts, of a proper kind, which have a direct tendency to benefit one party in his business at the expense of the other. It is no legal objection to action whose direct effect is helpful to one of the parties in the struggle that it is also directly detrimental to the other. But when action is directed against the other, primarily for the purpose of doing him harm and thus compelling him to yield to the demand of the actor, and this action does not directly affect the property, or business, or status of the actor, the case is different, even if the actor expects to derive a remote or indirect benefit from the act.

The gain which a labor union may expect to derive from inducing others to join it, is not an improvement to be obtained directly in the conditions under which the men are working, but only added strength for such contests with employers as may arise in the future. An object of this kind is too remote to be considered a benefit in business, such as to justify the infliction of intentional injury upon a third person for the purpose of obtaining it. If such an object were treated as legitimate, and allowed to be pursued to its complete accomplishment, every employee would be forced into membership in a union, and the unions, by a combination of those in different trades and occupations, would have complete and absolute control of all the industries of the country. Employers would be forced to yield to all their demands, or give up business. The attainment of such an object in the struggle with employers would not be competition, but monopoly. A monopoly, controlling anything which the world must have, is fatal to prosperity and progress. In matters of this kind the law does not tolerate monopolies. The attempt to force all laborers to combine in unions is against the policy of the law, because it aims at monopoly. It therefore does not justify causing the discharge, by his employer, of an individual laborer working under a contract. It is easy to see that, for different reasons, an act which might be done in legitimate competition by one, or two, or three persons, each proceeding independently, might take on an entirely different character, both in its nature and its purpose, if done by hundreds in combination.

We have no desire to put obstacles in the way of employees, who are seeking by combination to obtain better conditions for themselves and their families. We have no doubt that laboring men have derived and may hereafter derive advantages from organization. We only say that, under correct rules of law, and with a proper regard for the rights of individuals, labor unions cannot be permitted to drive men out of employment because they choose to work independently. If disagreements between those who furnish the capital and those who perform the labor employed in industrial enterprises are to be settled only by industrial wars, it would give a great advantage to combinations of employees, if they could be permitted, by force, to obtain a monopoly of the labor market. But we are hopeful that this kind of warfare soon will give way to industrial peace, and that rational methods of settling such controversies will be adopted universally.

The fact that the plaintiff's contract was terminable at will, instead of ending at a stated time, does not affect his right to recover. It only affects the amount that he is to receive as damages. *Moran* v. *Dunphy*, 177 Mass. 485, 487. *Perkins* v. *Pendleton*, 90 Maine, 166, 176. *Lucke* v. *Clothing Cutters & Trimmers' Assembly*, 77 Md. 396. *London Guarantee & Accident Co.* v. *Horn*, 101 Ill. App. 355; *S. C.* 206 Ill. 493.

The conclusion which we have reached is well supported by authority. The principle invoked is precisely the same as that which lies at the foundation of the decision in *Plant* v. *Woods,* 176 Mass. 492. In that case, although the power that lies in combination and the methods often adopted by labor unions in the exercise of it were stated with great clearness and ability, the turning point of the decision is found in this statement on page 502: "The necessity that the plaintiffs should join this association is not so great, nor is its relation to the rights of the defendants, as compared with the right of the plaintiffs to be free from molestation, such as to bring the acts of the defendants under the shelter of the principles of trade competition." *Carew* v. *Rutherford,* 106 Mass. 1. *Walker* v. *Cronin,* 107 Mass. 555, and the other cases cited in *Plant* v. *Woods, ubi supra,* as well as the later case of *Martell* v. *White,* 185 Mass. 255, all tend to support us in our decision.

We long have had a statute forbidding the coercion or compulsion by any person of any other "person into a written or verbal agreement not to join or become a member of a labor organization as a condition of his securing employment or continuing in the employment of such person." R. L. c. 106, § 12. The same principle would justify a prohibition of the coercion or compulsion of a person into a written or verbal agreement to join such an organization, as a condition of his securing employment, or continuing in the employment of another person.

The latest English cases, which explain and modify *Allen* v. *Flood* [1898], A. C. 1, seem in harmony with our conclusion. *Giblan* v. *National Amalgamated Labourers' Union* [1903], 2 K. B. 600. *Quinn* v. *Leathem* [1901], A. C. 495. In the first of these it was held that a labor union could not use its power to deprive one of employment, in order to compel him to pay a debt in which the union was interested. The case of *Curran* v. *Galen,* 152 N. Y. 33, in the decision of which the judges of the court of appeals were unanimous, fully covers the present case. The principle involved in each of the two cases is the same, and the language of the opinion in that case, in its application to this, is decisive. From the decision of *National Protective Assoc.* v. *Cumming,* 170 N. Y. 315, three of the seven judges dissented, and the result is to leave the law of New York in some uncertainty. The majority distinguished that case from *Curran* v. *Galen,* just referred to, and held that their decision was not inconsistent with it. They seem to have treated the arrangement to exclude persons not belonging to the union as entered into for legitimate purposes, having reference to actual or probable conditions in the employment; while the minority treated it as similar to the arrangement that appears in *Curran* v. *Galen.* See also *Jacobs* v. *Cohen,* 90 N. Y. Supp. 854; *Mills* v. *United States Printing Co.,* 99 App. Div. (N. Y.) 605.

The law of Illinois is in accord with our conclusion. In *London Guarantee & Accident Co.* v. *Horn,* 101 Ill. App. 355; *S. C.* 206 Ill. 493, it was held that a refusal of a workman to accede to the request of another in a matter affecting the pecuniary interest of the other would not justify the procurement of his discharge from the employment in which he was engaged, under a contract terminable at will. See also, for kindred doctrines, *Doremus* v. *Hennessy,* 176 Ill. 608; *Christensen* v. *People,* 114 Ill. App. 40; *Mathews* v. *People,* 202 Ill. 389; *Erdman* v. *Mitchell,* 207 Penn. St. 79; *Perkins* v. *Pendleton,* 90 Maine, 166. Other cases bearing more or less directly upon the general subject are *Lucke* v. *Clothing Cutters & Trimmers' Assembly,* 77 Md. 396; *Holder* v. *Cannon Manuf. Co.,* 135 N. C. 392; *Chipley* v. *Atkinson,* 23 Fla. 206; *Blumenthal* v. *Shaw,* 77 Fed. Rep. 954; *Barr* v. *Essex*

Trades Council, 8 Dick. 101; *Jersey City Printing Co.* v. *Cassidy,* 18 Dick. 759; *Crump* v. *Commonwealth,* 84 Va. 927; *Old Dominion Steamship Co.* v. *McKenna,* 30 Fed. Rep. 48; *Brown* v. *Jacobs' Pharmacy Co.,* 115 Ga. 429; *Bailey* v. *Master Plumbers,* 103 Tenn. 99; *Delz* v. *Winfree,* 80 Tex. 400. It will be seen that in the different courts there is considerable variety and some conflict of opinion.

We hold that the defendant was not justified by the contract with Goodrich and Company, or by his relations to the plaintiff, in interfering with the plaintiff's employment under his contract. How far the principles which we adopt would apply, under different conceivable forms of contract, to an interference with a workman not engaged, but seeking employment, or to different methods of boycotting, we have no occasion in this case to decide.

The defendant contends that the judge erred in his instruction to the jury, in response to the defendant's special request at the close of the charge. The judge said, in substance, that if the defendant caused the firm to discharge the plaintiff, by giving the members to understand that, unless they discharged him, they "would be visited with some punishment, under the contract or otherwise, then that interference would not be justifiable." This instruction, taken literally and alone, would be erroneous. Some grounds of interference would be justifiable while others would not. But considering the instruction in connection with that which immediately preceded it, and with other parts of the charge, it is evident that the judge was directing the attention of the jury to what would constitute an interference, not to what would justify an interference. He had just told them that, if all the defendant did was to call the attention of the firm to the provision of the contract, and the firm then, of their own motion, discharged the plaintiff, the defendant would not be liable. He then pursued the subject with some elaboration, and ended as stated above. Instead of saying, "then that interference would not be justifiable," he evidently meant to say, "then that would be interference which would create a liability, unless it was justifiable." Taking the charge as a whole, we think the jury were not misled by the inaccuracy of this statement.

Exceptions overruled.

H. F. Hurlburt (*J. J. Ryan* with him), for the defendant.

J. J. Winn, for the plaintiff.

ROBERT H. PICKETT *et als. v.* PATRICK J. WALSH *et als.*

SUFFOLK. OCTOBER 16, 1906.

192 Mass. 572.

Injunction against lawful strike denied. Sympathetic strike enjoined. Right to exclude from union considered.

LORING, J. This suit in equity comes before us on an appeal from a final decree, where the evidence was taken by a commissioner and where no findings of fact were made in the lower court.

The bill was brought to enjoin the defendants from combining and conspiring to interfere with the plaintiffs in pursuing their trade of brick and stone pointers. The purpose of the bill as stated in the prayers for relief was to enjoin the defendants (1) from combining and conspiring in any way to compel L. P. Soule and Son Company, or any other person, firm or corporation, by force, threats, intimidation or coercion, to discharge the complainants in the bill of complaint, to wit: Robert H. Pickett, Charles A. Pickett, Thomas J. Lally and Walter H. Wilkins, or to refrain from further employing them in and about their trade and occupation; (2) from combining and conspiring to compel the owners of the so-called Ford Building on Ashburton Place in the City of Boston to break or decline to carry out their said contract with the complainant Robert H. Pickett; and (3)

from combining and conspiring to interfere with the said complainants, or any of them, in the practice of their trade and occupation, or to prevent them from obtaining further employment thereat.

The defendants were the officers of two unincorporated bricklayers' unions, to wit, Unions No. 3 and No. 27, and of one stone masons' union, to wit, Union No. 9. The plaintiffs also undertook to make each one of the three unincorporated unions parties defendant. The Bricklayers' Union No. 27 seems from the evidence not to have been concerned in the matters in dispute. For this reason we shall not refer to it again except to show later on that there is no evidence that it took part in the matters here in question. The individual defendants were one Driscoll, the walking delegate of the Bricklayers' Union No. 3, one Walsh, the walking delegate of the Stone Masons' Union No. 9, and other persons who were officers of those two unions.

It appears from the evidence that the trade of brick and stone pointing is a trade which, in the neighborhood of the city of Boston at any rate, has been carried on to some extent as a separate trade for nearly if not quite one hundred years. It further appears that there are now some forty-five men engaged in that trade in the vicinity of that city.

The trade of a brick or a stone pointer consists in going over a building (generally when it is first erected) to clean it and to put a finish on the mortar of the joints. Apparently in the city of Worcester, and to some extent in the city of Boston, this work of pointing is done by bricklayers and stone masons.

The dispute which gave rise to the suit now before us had its origin in a set of rules adopted in January, 1905, by the Bricklayers' and Masons' International Union of America, to which the two unions here in question were subordinate. This set of rules contained a provision that bricklaying masonry should consist (*inter alia*) of "all pointing and cleaning brick walls," and that stone masonry should consist (*inter alia*) of the "cleaning and pointing of stone work." The practical working of the principles of brick and stone masonry as defined in these rules was left to the subordinate unions.

By the Constitution, By-Laws and Rules of Order of the Bricklayers' Union No. 3, it is provided that members shall not accept employment "where a difficulty exists in consequence of questions involving the rules which govern the Union," and that any member violating a law of the union shall on conviction "be reprimanded, suspended or fined at the discretion of the Union." No similar provision appears in the extract from the Constitution of the Stone Masons' Union which was in evidence, but it is not a violent assumption from the action of the masons and from the testimony of Walsh, the walking delegate of the Stone Masons' Union, that the members of the Masons' Union stood on the same footing as the members of the Bricklayers' Union in this respect.

In other words, the make-up of the two unions was such that any member of a subordinate union (which had adopted a working rule containing in substance the provisions of the working rules of the International Union as to cleaning and pointing buildings) who continued to work on a job on which a pointer was at work was liable to be reprimanded, fined or suspended.

This brings us to the action taken by the unions here in question.

There was an executive committee of the two unions. On July 28, 1905, this executive committee voted "that beginning September 18, 1905, no member of the Bricklayers' and Masons' unions of Boston and vicinity, will work on any building where the contractor will not agree to have the pointing done by bricklayers or masons."

This action of the executive committee was formally adopted by the Bricklayers' Union No. 3, and seems to have been informally adopted by the Stone Masons' Union No. 9. In pursuance thereof the following circular letter was issued: "The Bricklayers' and Masons' Unions of Boston and vicinity have voted that no bricklayer or mason will work for any firm or contractor who will not employ bricklayers or masons to do the pointing of brick, terra cotta and stone masonry. This action to go into effect September 18, 1905."

In September, 1905, L. D. Willcutt and Son as general contractors were erecting (among other buildings) a stone building on the corner of Massachusetts Avenue and Boylston Street in Boston. On the eighteenth day of that month, Mr. L. D. Willcutt of that firm was notified that if he did not discharge the pointers who were working for his firm in pointing that building all the masons and bricklayers working for his firm on other buildings in Boston (all of whom were union men) would strike. Thereupon he suspended the work which was being done by the pointers on the building on the corner of Massachusetts Avenue and Boylston Street. This evidence was admitted to show that there was a general scheme that where pointing was given to any one beside union bricklayers and stone masons there would be a strike.

On November 13, 1905, the defendant Walsh, the walking delegate of the Stone Masons' Union No. 9, and the defendant Driscoll, the walking delegate of the Bricklayers' Union No. 3, came to the Ford Building, for which the corporation of L. P. Soule and Son Company were the general contractors, and found that the cleaning and the pointing of that building were being done under a contract between the owners of the building and Robert H. Pickett, one of the plaintiffs here. They then went to a brick building which was being erected by the L. P. Soule and Son Company as contractors, a cold storage warehouse on Eastern Avenue, and there Driscoll notified the men that the pointing at the Ford Building was being done by pointers. In consequence all the bricklayers employed by the L. P. Soule and Son Company on the cold storage building, fifty in all, being union men, struck work on that or the next day. The next day, November 14, Walsh went to a stone building which was being erected by the same corporation for the International Trust Company on the corner of Arch Street and Devonshire Street, and told the workmen there of the pointing on the Ford Building; whereupon all the stone masons working there, five or six in all, being union men, struck work.

This bill was filed in the Superior Court on November 21, 1905. It seems to have come on for hearing on December 5, 1905. As we have said, the evidence was taken by a commissioner, a final decree in favor of the plaintiffs on all three grounds was made on December 11, without any special findings of fact, and the case is here on appeal from that decree.

It appeared from the testimony of Parker F. Soule (an officer of the L. P. Soule and Son Company) that it was cheaper to make a contract with pointers for the work of pointing and cleaning than to employ stone masons and bricklayers to do that work. It appeared from other evidence that the wages of a bricklayer or stone mason were fifty-five cents an hour, while pointers are paid three dollars for a day of eight hours, or thirty-seven and one half cents an hour. It further appeared from Mr. Soule's testimony that he preferred to give the work to the pointers because in cleaning a building acid has to be used, and, if the acid is used to excess, stains are caused which in some instances it is impossible to "get out"; and that he did not think that the bricklayers and stone masons were competent to use these acids. He also preferred to give the work to the pointers because

the work which is done by the pointers usually is done by contract, in which case the general contractor who employs the pointers is relieved from responsibility on account of accidents which may occur because of the fact that the work is done on a swinging stage, at times at great heights. Again it appeared from the evidence that L. P. Soule and Son Company were not the only contractors who thought that they got better work at a smaller cost and with less liability by making a contract with stone pointers for the doing of this work than by employing stone masons and bricklayers to do it.

All this was explained to the walking delegate of the Bricklayers' Union here in question at an interview between Mr. Soule and the walking delegate of that union held within two days of the strike. It also appeared that at that interview the delegate told Mr. Soule that, while it had been against the rules of the union that any member should take piece work, the taking of piece work recently had been allowed; whereupon Mr. Soule told him that "if he had any members of his union who were reliable men, whom we could have confidence enough in to let a contract to, who would give prices as low, . . . he would have no trouble in getting all the stone pointing there was going." No offer to make a contract on these terms was made, and on the evidence it must be assumed that there was nothing in this statement of the defendant Walsh.

It further appeared from the evidence that the brick and stone pointers of Boston applied to the Building Trades Council for a charter. It is stated in the record of the Brick Masons' Union No. 3, that "the said pointers about a year ago applied to the A. F. of L. for a charter, which was denied them, the American Federation of Labor taking the stand that brick and stone pointing was a part of the bricklayers' and masons' trade." On September 11, 1905, the Brick Masons' Union No. 3 voted to "file a protest to the B. T. C. against their granting a charter to the brick and stone pointers of Boston," and on September 18 it was voted "that this Committee [*sic*] send communication to B. T. C. requesting that body not to grant a charter to the so-called brick and stone pointers." It was admitted that the men engaged in the business of brick and stone pointers were not qualified for the business of bricklayers and stone masons.

There was evidence that at the interview between Driscoll and Mr. Willcutt, Mr. Willcutt told Driscoll that he did not believe that, when there were twelve hundred men in the union and thirty pointers outside, all this fuss was being made to get the pointers' work for the union men; that he thought it was "simply a question of dictation to us;" and on Mr. Willcutt's asking him (Driscoll) "Do you really want it or do you want to drive the men out of business?" Driscoll smiled and said: "That is a charitable way of looking at it."

There seem to be three causes of action upheld by the decree.

In the first place, Robert H. Pickett, one of the plaintiffs, had a contract with the owners of the Ford Building and was at work under it when the defendants struck. He seeks protection from a strike on L. P. Soule and Son Company to force the owners of the Ford Building to give this work to the unions and to take it away from him. Except for the fact of this contract, in which the plaintiff Robert H. Pickett alone was concerned, the first and second causes of action are alike.

The second cause of action consists in the effort of all the plaintiffs to be protected from being discharged or not employed by the L. P. Soule and Son Company because the defendants struck work for that corporation so long as that corporation worked on a building on which Robert H. Pickett was employed by the owners of that building.

Finally, the plaintiffs sought to be

protected against a strike by the defendants in order to get the work of pointing for the members of their unions.

No objection has been taken to the bill on the ground of multifariousness. We therefore shall consider all three causes of action.

We will consider first the last of the three causes of action.

The question, so far as this the third cause of action goes (apart from a question of fact which we will deal with later on), is whether the defendant unions have a right to strike for the purpose for which they struck; or, to put it more accurately and more narrowly, it is this: Is a union of bricklayers and stone masons justified in striking to force a contractor to employ them by the day to do cleaning and pointing at higher wages than pointers are paid, where the contractors wish to make contracts with the pointers for such work to be done by the piece because they think they get better work at less cost with no liability for accidents, and where the pointers wish to make contracts for that work with the contractors on terms satisfactory to them?

In other words, we have to deal with one of the great and pressing questions growing out of the existence of the powerful combinations, sometimes of capital and sometimes of labor, which have been instituted in recent years where their actions come into conflict with the interests of individuals. The combination in the case at bar is a combination of workmen, and the conflict is between a labor union on the one hand and several unorganized laborers on the other hand.

It is only in recent years that these great and powerful combinations have made their appearance, and the limits to which they may go in enforcing their demands are far from being settled.

It is settled however that laborers have a right to organize as labor unions to promote their welfare.

Further, there is no question of the general right of a labor union to strike.

On the other hand it is settled that some strikes by labor unions are illegal. It was held in *Carew* v. *Rutherford,* 106 Mass. 1, that a strike by the members of a labor union was illegal when set on foot to force their employer to pay a fine imposed upon him by the union of which he was not a member, for not giving the union all his work. To the same effect see *March* v. *Bricklayers' & Plasterers' Union No. 1,* 79 Conn. 7. Again, it was held in *Plant* v. *Woods,* 176 Mass. 492, that a labor union could not force other workmen to join it by refusing to work if workmen were employed who were not members of that union. To the same effect see *Erdman* v. *Mitchell,* 207 Penn. St. 79; *O'Brien* v. *People,* 216 Ill. 354; *Loewe* v. *California State Federation of Labor,* 139 Fed. Rep. 71. And see in this connection *Giblan* v. *National Amalgamated Labourers' Union* [1903], 2 K. B. 600.

When and for what end this power of coercion and compulsion commonly known as a strike may be legally used is the question which this case calls upon us to decide. In the present state of the authorities it becomes necessary to consider the general principles governing labor unions and strikes by labor unions.

The right of laborers to organize unions and to utilize such organizations by instituting a strike is an exercise of the common law right of every citizen to pursue his calling, whether of labor or business, as he in his judgment thinks fit. It is pointed out in *Carew* v. *Rutherford,* 106 Mass. 1, 14, that in the earlier days of the colony the government undertook to control the conduct of labor and business to some extent, but that later this policy of regulation was abandoned and all citizens were left free to pursue their calling, whether of labor or business, as seemed to them best. This common law right was raised to the dignity of a constitu-

tional right by being incorporated in the Constitution of the Commonwealth. So far as the question now before us goes it is of no consequence whether the right to pursue one's calling (whether it be of labor or of business) is a common law right or a constitutional right, since the violation of it here complained of is on the part of individuals and not on the part of the Legislature. What is of consequence here is that such a right exists. In article 1 of the Declaration of Rights it is declared that "All men are born free and equal, and have certain natural, essential, and unalienable rights; among which may be reckoned the right of . . . acquiring, possessing, and protecting property; in fine, that of seeking and obtaining their safety and happiness." It is in the exercise of this right that laborers can legally combine together in what are called labor unions.

This right of one or more citizens to pursue his or their calling as he or they see fit is limited by the existence of the same right in all other citizens. The right and the result are accurately stated by Sir William Erle in his book on Trades Unions in these words: "Every person has a right under the law, as between him and his fellow subjects, to full freedom in disposing of his own labor or his own capital according to his own will. It follows that every other person is subject to the correlative duty arising therefrom, and is prohibited from any obstruction to the fullest exercise of this right which can be made compatible with the exercise of similar rights by others;" cited by this court in *Plant* v. *Woods*, 176 Mass. 492, 498.

We now have arrived at the point where a labor union, being an organization brought about by the exercise on the part of its members of the right of every citizen to pursue his calling as he thinks best, is limited in what it can do by the existence of the same right in each and every other citizen to pursue his and their calling as he or they think best.

In addition to the limitation thus put on labor unions there is a fact which puts a further limitation on what acts a labor union can legally do. That is the increase of power which a combination of citizens has over the individual citizen. Take for example the power of a labor union to compel by a strike compliance with its demands. Speaking generally a strike to be successful means not only coercion and compulsion but coercion and compulsion which, for practical purposes, are irresistible. A successful strike by laborers means, in many if not in most cases, that for practical purposes the strikers have such a control of the labor which the employer must have that he has to yield to their demands. A single individual may well be left to take his chances in a struggle with another individual. But in a struggle with a number of persons combined together to fight an individual the individual's chance is small, if it exists at all. It is plain that a strike by a combination of persons has a power of coercion which an individual does not have.

The result of this greater power of coercion on the part of a combination of individuals is that what is lawful for an individual is not the test of what is lawful for a combination of individuals; or to state it in another way, there are things which it is lawful for an individual to do which it is not lawful for a combination of individuals to do. Take for example the example put in *Allen* v. *Flood* [1898], A. C. 1, 165, of a butler refusing to renew a contract of service because the cook was personally distasteful to him, whereupon, in order to secure the services of the butler, the master refrains from re-engaging the cook whose term of service also had expired. We have no doubt that it is within the legal rights of a single person to refuse to work with another for the reason that the other person is distasteful to him, or for any other reason however arbitrary. But it is established

in this Commonwealth that it is not legal (even where he wishes to do so) for an employer to agree wth a union to discharge a non-union workman for an arbitrary cause at the request of the union. *Berry* v. *Donovan,* 188 Mass. 353. *A fortiori* the members of a labor union cannot by a strike refuse to work with another workman for an arbitrary cause. For the general proposition that what is lawful for an individual is not necessarily lawful for a combination of individuals see *Quinn* v. *Leathem* [1901], A. C. 495, 511; *Mogul Steamship Co.* v. *McGregor,* 23 Q. B. D. 598, 616; *S. C.* on appeal [1892], A. C. 25, 45; *Gregory* v. *Brunswick,* 6 M. & G. 205; *S. C.* on appeal, 3 C. B. 481. It is in effect concluded by *Plant* v. *Woods,* 176 Mass. 492.

These being the general principles, we are brought to the question of the legality of the strike in the case at bar, namely, a strike of bricklayers and masons to get the work of pointing, or, to put it more accurately, a combination by the defendants, who are bricklayers and masons, to refuse to lay bricks and stone where the pointing of them is given to others. The defendants in effect say we want the work of pointing the bricks and stone laid by us, and you must give us all or none of the work.

The case is one of competition between the defendant unions and the individual plaintiffs for the work of pointing. The work of pointing for which these two sets of workmen are competing is work which the contractors are obliged to have. One peculiarity of the case therefore is that the fight here is necessarily a triangular one. It necessarily involves the two sets of competing workmen and the contractor, and is not confined to the two parties to the contract, as is the case where workmen strike to get better wages from their employer or other conditions which are better for them. In this respect the case is like *Mogul Steamship Co.* v. *McGregor,* 23 Q. B. D. 598; *S. C.* on appeal [1892], A. C. 25.

The right which the defendant unions claim to exercise in carrying their point in the course of this competition is a trade advantage, namely, that they have labor which the contractors want, or, if you please, cannot get elsewhere; and they insist upon using this trade advantage to get additional work, namely, the work of pointing the bricks and stone which they lay. It is somewhat like the advantage which the owner of back land has when he has bought the front lot. He is not bound to sell them separately. To be sure the right of an individual owner to sell both or none is not decisive of the right of a labor union to combine to refuse to lay bricks or stone unless they are given the job of pointing the bricks laid by them. There are things which an individual can do which a combination of individuals cannot do. But having regard to the right on which the defendants' organization as a labor union rests, the correlative duty owed by it to others, and the limitation of the defendants' rights coming from the increased power of organization, we are of opinion that it was within the rights of these unions to compete for the work of doing the pointing and, in the exercise of their right of competition, to refuse to lay bricks and set stone unless they were given the work of pointing them when laid. See in this connection *Plant* v. *Woods,* 176 Mass. 492, 502; *Berry* v. *Donovan,* 188 Mass. 353, 357.

The result to which that conclusion brings us in the case at bar ought not to be passed by without consideration.

The result is harsh on the contractors, who prefer to give the work to the pointers because (1) the pointers do it by contract (in which case the contractors escape the liability incident to the relation of employer and employee); because (2) the contractors think that the pointers do the work better, and if not well done the buildings may be

permanently injured by acid; and finally (3) because they get from the pointers better work with less liability at a smaller cost. Again, so far as the pointers (who cannot lay brick or stone) are concerned, the result is disastrous. But all that the labor unions have done is to say you must employ us for all the work or none of it. They have not said that if you employ the pointers you must pay us a fine, as they did in *Carew* v. *Rutherford,* 106 Mass. 1. They have not undertaken to forbid the contractors employing pointers, as they did in *Plant* v. *Woods,* 176 Mass. 492. So far as the labor unions are concerned the contractors can employ pointers if they choose, but if the contractors choose to give the work of pointing the bricks and stones to others the unions take the stand that the contractors will have to get some one else to lay them. The effect of this in the case at bar appears to be that the contractors are forced against their will to give the work of pointing to the masons and bricklayers. But the fact that the contractors are forced to do what they do not want to do is not decisive of the legality of the labor union's acts. That is true wherever a strike is successful. The contractors doubtless would have liked it better if there had been no competition between the bricklayers' and masons' unions on the one hand and the individual pointers on the other hand. But there is competition. There being competition, they prefer the course they have taken. They prefer to give all the work to the unions rather than get non-union men to lay bricks and stone to be pointed by the plaintiffs.

Further, the effect of complying with the labor unions' demands apparently will be the destruction of the plaintiffs' business. But the fact that the business of a plaintiff is destroyed by the acts of the defendants done in pursuance of their right of competition is not decisive of the illegality of the acts. It was well said by Hammond, J. in *Martell* v. *White,* 185 Mass. 255, 260, in regard to the right of a citizen to pursue his business without interference by a combination to destroy it: "Speaking generally, however, competition in business is permitted, although frequently disastrous to those engaged in it. It is always selfish, often sharp, and sometimes deadly."

We cannot say on the evidence that pointing is something foreign to the work of a bricklayer or a stone mason and therefore something which a union of bricklayers and stone masons have no right to compete for or insist upon, and so bring the case within *Carew* v. *Rutherford,* 106 Mass. 1; *March* v. *Bricklayers & Plasterers Union No. 1,* 79 Conn. 7; and *Giblan* v. *National Amalgamated Labourers' Union* [1903], 2 K. B. 600. On the contrary the evidence shows that in Boston the pointing is done to some extent by bricklayers and stone masons, and there is no evidence that the trade of pointers exists outside that city.

The protest of the defendant unions against the plaintiffs being allowed to organize a pointers' union is not an act of oppression. It is not like the refusal of the union in *Quinn* v. *Leathem* [1901], A. C. 495, to work with the non-union men or to admit the non-union men to their union. The defendants' unions are not shown to be unwilling to admit the plaintiffs to membership if they are qualified as bricklayers or stone masons. But the difficulty is that the plaintiffs are not so qualified. They are not bricklayers or masons. The unions have a right to determine what kind of workmen shall compose the union, and to insist that pointing shall not be a separate trade so far as union work is concerned. They have not undertaken to say that the contractors shall not treat the two trades as distinct. What they insist upon is that if the contractors employ them they shall employ them to do both kinds of work.

The application of the right of the

defendant unions, who are composed of bricklayers and stone masons, to compete with the individual plaintiffs, who can do nothing but pointing (as we have said), is in the case at bar disastrous to the pointers and hard on the contractors. But this is not the first case where the exercise of the right of competition ends in such a result. The case at bar is an instance where the evils which are or may be incident to competition bear very harshly on those interested, but in spite of such evils competition is necessary to the welfare of the community.

So far as previous decisions go the case which comes nearest to the case at bar in the kind of question raised is that of *Allen* v. *Flood* [1898], A. C. 1. In that case there was a dispute between shipwrights and boiler makers as to iron work in shipbuilding. It was stated by some of the judges (see for example Lord Watson at p. 99; Lord Herschell at p. 129; Lord Macnaghten at p. 151) that it was lawful for either to strike to get this work from the other. But the decision in *Allen* v. *Flood* went off on another ground. See Lord Halsbury, Ch. in *Quinn* v. *Leathem* [1901], A. C. 495.

The defendants have urged upon us the case of *Bowen* v. *Matheson,* 14 Allen, 499. But although so far as the third cause of action here in question is concerned we have reached the result arrived at in that case, we have reached it on other grounds. That case went up on demurrer and the ground on which that case was decided was that on the allegations in the declaration it was to be treated as one of the class of cases of which *Parker* v. *Huntington,* 2 Gray, 124, is the leading case in this Commonwealth, and *Bilafsky* v. *Conveyancers Title Ins. Co., ante,* 504, is the last, namely, cases in which the allegations of conspiracy are not allegations of a tortious act in and of themselves, but are simply allegations that the defendants joined in doing acts otherwise alleged to be tortious. It is not now material to inquire whether *Bowen* v. *Matheson* should or should not have been held to belong to this class of cases, for it is settled in this Commonwealth, as we have already said, that the line within which a combination of individuals like a labor union must confine its actions is drawn much closer than in case of the same individuals acting separately.

The plaintiffs have asked us to find on the evidence that the actions of the unions and of the business agents and other officers and of the members in compelling L. P. Soule and Son Company to discharge "the plaintiffs was due in part to a desire to further and protect their own interests, or what they conceived to be such, but more to a reckless and wanton, if not malicious, disregard of the rights of the plaintiffs and of others engaged in the business of pointing and to a determination to force them out of business and thereby deprive them of their accustomed means of earning a livelihood."

We find on the evidence that the plaintiffs have not made out the fact that the defendants' action was due to a reckless and wanton, if not malicious disregard of the rights of the plaintiffs and of others engaged in the business of pointing. Under these circumstances we do not find it necessary to decide what would have been the result had we found that fact. See in this connection Bowen, L.J. in *Mogul Steamship Co.* v. *McGregor,* 23 Q. B. D. 598, 615.

It follows that the third clause of the decree, which follows the third prayer of the bill, must be stricken out.

This brings us to the legality of the strike by the union bricklayers and masons employed by the L. P. Soule and Son Company on other buildings because that corporation was doing work on a building on which work was being done by pointers employed not by the L. P. Soule and Son Company but by the owners of the building.

That strike has an element in it like that in a sympathetic strike, in a boycott and in a blacklisting, namely: It is a refusal to work for A, with whom the strikers have no dispute, because A works for B, with whom the strikers have a dispute, for the purpose of forcing A to force B to yield to the strikers' demands. In the case at bar the strike on the L. P. Soule and Son Company was a strike on that contractor to force it to force the owner of the Ford Building to give the work of pointing to the defendant unions. That passes beyond a case of competition where the owner of the Ford Building is left to choose between the two competitors. Such a strike is in effect compelling the L. P. Soule and Son Company to join in a boycott on the owner of the Ford Building. It is a combination by the union to obtain a decision in their favor by forcing third persons who have no interest in the dispute to force the employer to decide the dispute in their (the defendant unions') favor. Such a strike is not a justifiable interference with the right of the plaintiffs to pursue their calling as they think best. In our opinion organized labor's right of coercion and compulsion is limited to strikes against persons with whom the organization has a trade dispute; or to put it in another way, we are of opinion that a strike against A, with whom the strikers have no trade dispute, to compel A to force B to yield to the strikers' demands, is an unjustifiable interference with the right of A to pursue his calling as he thinks best. Only two cases to the contrary have come to our attention, namely: *Bohn Manuf. Co.* v. *Hollis,* 54 Minn. 223, and *Jeans Clothing Co.* v. *Watson,* 168 Mo. 133. The first of these two cases was overruled on this point in *Gray* v. *Building Trades Council,* 91 Minn. 171. The conclusion to which we have come is supported by *My Maryland Lodge* v. *Adt,* 100 Md. 238; *Gray* v. *Building Trades Council,* 91 Minn. 171; *Purington* v. *Hinchliff,* 219 Ill. 159; *Beck* v. *Railway Teamsters' Protective Union,* 118 Mich. 497; *Crump* v. *Commonwealth,* 84 Va. 927; *State* v. *Glidden,* 55 Conn. 46; *Purvis* v. *United Brotherhood of Carpenters,* 214 Penn. St. 348; *Gatzow* v. *Buening,* 106 Wis. 1; *Barr* v. *Essex Trades Council,* 8 Dick. 101; *Temperton* v. *Russell* [1893], 1 Q. B. 715; Taft, J. in *Toledo, Ann Arbor & North Michigan Railway* v. *Pennsylvania Co.,* 54 Fed. Rep. 730; *Loewe* v. *California State Federation of Labor,* 139 Fed. Rep. 71; *Hopkins* v. *Oxley Stave Co.,* 83 Fed. Rep. 912; *Casey* v. *Cincinnati Typographical Union No. 3,* 45 Fed. Rep. 135.

It is settled in this Commonwealth by a long line of cases that a defendant is liable for an intentional and unjustifiable interference with the pursuit on the part of the plaintiff of his calling, whether it be of labor or business. *Walker* v. *Cronin,* 107 Mass. 555. *Carew* v. *Rutherford,* 106 Mass. 1. *Vegelahn* v. *Guntner,* 167 Mass. 92. *Plant* v. *Woods,* 176 Mass. 492. *Martell* v. *White,* 185 Mass. 255.

For the reason that the strike on the buildings being erected by the L. P. Soule and Son Company was not a strike in a trade dispute between the union and that corporation, the first and second clauses of the decree were in substance correct. Robert H. Pickett, however, is the only plaintiff who is shown to have had any interest in the work on the Ford Building, and therefore the second clause of the decree alone should stand.[1]

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[1] The material part of the decree was as follows:

"That the respondents in said bill, to wit: The Bricklayers Benevolent and Protective Unions No. 3 and No. 27, The Stone Masons Benevolent and Protective Union No. 9, and each and every member thereof, Jeremiah J. Driscoll, Patrick J. Walsh, Michael J. Shea, J. Cronan, Dennis J. Sullivan, George K. Watson, John P. Burke, J. M. Ryan, Theodore Eldracher, Joseph W. Luke and George J. Twiss, and each of them, their servants, agents, confederates and attorneys, be and hereby are perpetually restrained and enjoined from combining and conspiring in any way to

A few matters of detail remain to be dealt with.

All that the Bricklayers' Union No. 27 seems to have done was to adopt working rules making pointing a part of the trade of bricklaying. There is no evidence that they authorized the sending of the circular letter or took part in the strike. That union and the members of it should be stricken from the decree.

No objection has been taken to the decree in favor of Robert H. Pickett on the ground that damages would have given him adequate compensation for breach of his contract. For that reason it is not necessary to consider whether his proper remedy was an action at law for damages, as in *Carew* v. *Rutherford,* 106 Mass. 1, *Walker* v. *Cronin,* 107 Mass. 555, *Berry* v. *Donovan,* 188 Mass. 353, and *Quinn* v. *Leathem* [1901], A. C. 495.

There is a point of practice which must be noticed. As we have said, the plaintiffs have undertaken to make three unincorporated labor unions parties defendant. That is an impossibility. There is no such entity known to the law as an unincorporated association, and consequently it cannot be made a party defendant. That was conceded in *Taff Vale Railway* v. *Amalgamated Society of Railway Servants* [1901], A. C. 426. The point decided in that case was that the labor union defendant in that case could be sued because it was registered under Trades Union Acts 1871, c. 31, and 1876, c. 22. At law, if the objection is properly taken, every member of an unincorporated association must be joined as a party defendant. In equity, if the members are numerous, a number of members may be made parties defendant as representatives of the class. The practice in Massachusetts in suits against members of unincorporated labor unions generally has been in accordance with these well settled principles. See *Bowen* v. *Matheson,* 14 Allen, 499; *Carew* v. *Rutherford,* 106 Mass. 1; *Plant* v. *Woods,* 176 Mass. 492; *Martell* v. *White,* 185 Mass. 255. A trade union was made a party defendant in *Vegelahn* v. *Guntner,* 167 Mass. 92, and the anomaly seems to have escaped attention. The judge who entered the decree in the case at bar made it apply to the unions "and each and every member thereof." He seems to have treated the case as a case where a numerous body had been properly represented by defendants joined for that purpose. Possibly, so far as the trial of the case was concerned, the members of these two unions were in fact represented by the individual defendants. But there is nothing on the record which justifies a decree against "each and every member" of the three unions on the ground that the defendants were joined as representing the individual members of the unions constituting a numerous class of defendants. The three unions should be stricken from the bill as parties defendant, and proper allegations should be made to bind the members of the two unions as parties defendant. If the individual defendants were proper representatives of the members of the unions in question, and these members would suffer no damage from the bill being so amended now, that can be done. The cases are collected in *Fay* v. *Walsh,* 190 Mass. 374.

Upon the bill being so amended within sixty days the decree may be modified as hereinbefore set forth, and

compel L. P. Soule and Son Company, or any other person, firm or corporation, by force, threats, intimidation or coercion, to discharge the complainants in the bill of complaint, to wit: Robert H. Pickett, Charles A. Pickett, Thomas J. Lally and Walter H. Wilkins, or to refrain from further employing them in and about their trade and occupation, and from combining and conspiring to compel the owners of the so-called Ford Building on Ashburton Place in the city of Boston to break or decline to carry out their said contract with the complainant Robert H. Pickett, and from combining and conspiring to interfere with the said complainants, or any of them, in the practice of their trade and occupation, or to prevent them from obtaining further employment thereat."

on being so modified, affirmed; otherwise the decree must be reversed.

So ordered.

F. W. Mansfield, for the defendants.

S. J. Elder & E. A. Whitman, for the plaintiffs.

ABERTHAW CONSTRUCTION COMPANY *v.* C. W. CAMERON *et als.*

SUFFOLK. FEBRUARY 27, 1907.

194 Mass. 209.

Strike against employment of non-union men by building contractor enjoined. Breach of contract to avoid general strike enjoined.

Bill in equity, filed in the Supreme Judicial Court on February 23, and amended on February 28 and March 3, 1906, by a corporation, organized under the laws of the State of Maine and having its usual place of business in Boston, against the business agent, the president, the vice-president, the secretary and the treasurer of the Carpenters District Council of Boston and Vicinity, a voluntary association, and against the same persons individually and as members of that association, and against the members of a committee of that association, against certain other persons individually and as officers of another voluntary association known as the Building Trades Council, against the Christian Science Board of Directors, "a corporation duly organized according to law, of said Boston," and against the secretary and two other members of that corporation individually and as agents of the corporation, to enjoin the defendants other than the defendant corporation from inducing that defendant to break its contract with the plaintiff under which the plaintiff had agreed to construct and to complete by March 12, 1906, a concrete floor in the auditorium and corridors of a structure known as the First Church of Christ, Scientist, on Falmouth Street in Boston, to enjoin the defendant corporation from breaking such contract, and to enjoin all the defendants from interfering by threats, intimidation or coercion with any of the persons employed by the plaintiff and from combining and conspiring to compel the plaintiff in the prosecution of its business to employ only members of the Carpenters District Council or of any other union and to discharge any persons in its employ who were not members of such union or of any other labor union, praying for a temporary and a permanent injunction and for an assessment of damages.

The case was referred to Wade Keyes, Esquire, as master. He filed a report in which he found for the plaintiff. Later the case was heard upon the master's report and the defendants' exceptions thereto by *Sheldon,* J., who overruled all the exceptions except one, which is described below, and reported the case for determination by the full court as follows:

"This case came on for hearing upon the filing of the master's report and the exceptions of the defendants thereto. I overruled all the exceptions except the second exception of the defendant Christian Science Board of Directors.

"The plaintiff contended that the defendant Christian Science Board of Directors became a co-conspirator with the other defendants from the time when they first sought to induce the plaintiff to discharge the workman Stark. Against the plaintiff's objection I ruled that the Christian Science Board of Directors became co-conspirators only on its overt act in breaking its contract with the plaintiff on Wednesday, February 21, 1906, and therefore sustained the second exception so far as the same applies to the item of $15.12, cost of reinstating work destroyed, and $3.13, cost of advertising in the public press, said items of damage having accrued before said breach of contract. Thus modified I ordered the master's report to be confirmed.

"The plaintiff asked for a permanent injunction in the following form:

"'That the following respondents,

named in said bill, to wit, the Carpenters District Council of Boston and Vicinity, and each and every member thereof, C. W. Cameron, W. D. McIntosh, S. F. McArthur, H. M. Taylor, J. E. Potts, J. F. Medland, John McLeod, and Patrick Slow, individually and as officers and agents of said Carpenters District Council, and the Christian Science Board of Directors, and the servants, agents, confederates and attorneys of each of the foregoing persons, associations and corporations, and all others who may act in concert with them or by their direction, be, and they hereby are, perpetually restrained and enjoined from combining and conspiring to compel said complainant in the prosecution of its business to employ members of said Carpenters District Council or of any other labor organization so called, and to refrain from employing any person or persons who may be non-union men so called; and said respondents, their servants, agents, confederates and attorneys are further enjoined and restrained, for the purpose of compelling the complainant to employ exclusively in the transaction of its work and business members of said Carpenters District Council or of any other labor union, from breaking or combining or conspiring to break, or causing to be broken, any contract or contracts which the complainant may now or hereafter have, either with any of the defendants herein or with any other person or corporation whatsoever; and for said purpose from directly or indirectly calling or combining or conspiring to call or cause a strike of workmen or a cessation of work by workmen now employed or hereafter to be employed by the complainant in the transaction of its business, and for such purpose from interfering by threats, intimidation, or coercion, or any other obstructive action, with any of the persons now employed or whom said complainant may hereafter seek to employ in the transaction of its business, and for said purpose from combining and conspiring to interfere with the said complainant in the practice and prosecution of its occupation and business, and to prevent or obstruct it from obtaining further contracts therefor and employment therein, or from securing the services of workmen to carry out such contracts.'

"The defendants other than the Christian Science Board of Directors objected to any injunction which should apply to any part of the plaintiff's business except the particular work being done by the plaintiff under contract with the defendant Christian Science Board of Directors, which work was completed on March 12, 1906. Against the plaintiff's objection I ruled that the injunction should apply only to said work, and not to other work.

"No question is made that the bill as to the defendants William B. Johnson, Charles Brigham, Charles C. Coveney, John Doe and Richard Roe, and the Building Trades Council should be dismissed without costs.

"All questions of pleading are waived.

"At the request of the plaintiff I report the case to the full court, such decrees to be entered as, on the master's report, law and justice require."

G. W. Anderson (*E. H. Ruby* with him), for the plaintiff.

F. W. Mansfield, for the defendants other than the Christian Science Board of Directors.

Braley, J. The plaintiff's bill prays for injunctive relief, and the assessment of damages against the defendants who are alleged to have formed a conspiracy to compel it under penalty of a general strike of its employees to hire only union workmen in the erection of a large building then in process of construction under its contract with the Christian Science Board of Directors, one of the defendants. Upon the principal question, the master to whom the case was referred found in favor of the plaintiff, and his report was confirmed except as to the time when this de-

fendant became a party to the conspiracy. By the modification of the single justice it was held that it did not unlawfully participate until February 21, 1906, when the board voted to request the plaintiff to cease work as they had decided to finish the building in another way. The master not only finds that this action was taken and communicated to the plaintiff, who refused compliance, but that on February 15, 1906, after having been informed by the defendant Cameron that a general strike was proposed if the plaintiff continued to employ one Stark, who did not belong to either of the unions, the members of the board had an interview with the plaintiff. In this interview they requested the plaintiff either to discharge Stark, or procure employment for him elsewhere, or permit them to do so, and this action is found to have been taken to avoid a general strike which they believed probable if he was permitted to remain. By the pleadings and in the report this defendant is described as a corporation known as the Christian Science Board of Directors, and there is no statement or finding that this body was representative rather than original, or that the authority of the board if treated as the corporation itself was limited by any by-law or vote. The conspiracy charged and proved was a combination to coerce the plaintiff to accede to the demands of Cameron and the organizations named as defendants, in which this defendant joined. Being a body corporate gave it no immunity from the consequences, for which it could be held liable as if it had been a natural person. *White* v. *Apsley Rubber Co.,* 194 Mass. 97, and cases cited. *Buffalo Lubricating Oil Co.* v. *Standard Oil Co.,* 106 N. Y. 669. But while in a conspiracy at common law an overt act need neither be alleged nor proved, as the offence consists in the unlawful combination, there must be a mutual understanding whereby all the conspirators work together for a common end. *Commonwealth* v. *Hunt,* 4 Met. 111. *Commonwealth* v. *Eastman,* 1 Cush. 189, 224. *Revere Water Co.* v. *Winthrop,* 192 Mass. 455. The plans of the other defendants were well on foot when this defendant who had been informed of their object intervened, and sought by its representations to persuade the plaintiff to avoid all future difficulty, by discharging an employee who had not become obnoxious to the corporation, except by reason of its pecuniary interest that there should be no unreasonable delay in the completion of its church. The master did not report the evidence, and the usual rule applies. But beyond this special finding he made no further finding as to the conduct of the members of the board before the vote was taken. It is plain that the interview with the accompanying proposals was advisory only and not intended to re-enforce or aid in the coercive measures adopted by the unions and their representatives, or to form a part of the measures of active interference which the other defendants were taking to enforce their demand. The ruling that the proposals made at this conference did not make them co-conspirators by participation therefore must be sustained.

In the general scheme of the conspiracy the breaking of the contract[1] which subsequently followed was an

[1] The vote of the defendant corporation was communicated to the plaintiff in a letter from the architect of the corporation, found by the master to have been its agent for the purpose. This letter contained the following sentence: "I am instructed by the Directors of the First Church of Christ, Scientist, to inform you that it is their wish that you retire immediately from the work at the First Church of Christ, Scientist. It has been decided by them to do the remainder of the work included in your contract in a different manner, commencing at one o'clock today."

About twelve o'clock on the same day the agent of the defendant corporation ordered the plaintiff to leave the job, and, upon its refusal to do so, this agent called the watchman employed by the directors to police the building, who forcibly, but without actual physical violence, ejected the foreman of the plaintiff from the job and escorted him to the street, and the men employed by the plaintiff followed.

important element, and when taken in connection with the action of the other bodies of which the board had knowledge, the concluding finding that the defendants against whom this bill is prosecuted "conspired together to compel the plaintiff to employ only union carpenters" and "that in pursuance of such conspiracy they caused a breach of the existing contract of employment between the plaintiff and the defendant board, without any just cause or lawful provocation" was well warranted. *Walker* v. *Cronin,* 107 Mass. 555. *South Wales Miners' Federation* v. *Glamorgan Coal Co.* [1905], A. C. 239, 250, 253.

The remaining question relates to the form and scope of the decree. An interlocutory injunction having issued under the first prayer of the bill, the plaintiff fully performed its contract, completing the work more than two months before the case appears to have been ripe for the entry of a final decree. The plaintiff is not content with a decree in which relief is confined to the unlawful acts of the defendants in connection with the contract described in its bill, but asks for a permanent injunction restraining the unions and their officers from any interference in the future if the plaintiff in the performance of other contracts chooses to employ non-union workmen. To this proposition the answer is plain. By the terms of the report under which the case is before us while it is stated that all questions of pleading are waived, it is also stated, that such decrees are to be entered on the master's report as law and justice require. The master's report rests upon the frame of the bill with which it must be considered, not only for the purpose of the modification, but as to the extent of the relief to which the plaintiff is entitled. This issue was not presented by the pleadings, and consequently it neither has been heard and determined by the master nor by the single justice. If the pleadings are disregarded it would be equally extraordinary to enter such a decree upon the report of a master to whom this question was not referred, and upon which he has not passed. The conspiracy in which the defendants are found to have participated was an unjustifiable wrong causing temporary damage. *Martell* v. *White,* 185 Mass. 255. But while unlawful conduct has been proved in the present case, this fact raises no presumption that in the future the defendants will engage in similar wrongful acts. *Hatch* v. *Bayley,* 12 Cush. 27, 30. *Phelps* v. *Cutler,* 4 Gray, 137. *Stewart* v. *Thomas,* 15 Gray, 171. *Baldwin* v. *Parker,* 99 Mass. 79. *Kline* v. *Baker,* 106 Mass. 61. And if such a combination exists it must be pleaded and proved before appropriate relief can be granted. See *Plant* v. *Woods,* 176 Mass. 492, 496, 497; *Reynolds* v. *Everett,* 144 N. Y. 189. The plaintiff is entitled to a decree with costs confirming the master's report as modified, awarding execution for the damages assessed less the diminution thus caused, and the injunction heretofore issued may be made perpetual if it desires.

Ordered accordingly.

GABRIEL E. BEEKMAN *v.* GEORGE E. MARSTERS.

SUFFOLK. APRIL 6, 1907.

195 Mass. 205.

Unlawful interference with existing contract enjoined.

LORING, J. This suit came before the single justice on the report of a master to which no exceptions had been taken by either party, and was reserved by him for our consideration and determination without any ruling or decision having been made.

The master found that on November 21, 1906, a contract was made between the plaintiff and the Jamestown Hotel Corporation. That corporation is erecting or has erected a hotel within the grounds of the Jamestown Exposition to be held between April 26 and Novem-

ber 30 of this year. This hotel is known as the Inside Inn, and is to be the only hotel within the exposition grounds. The plaintiff is the proprietor of a tourist agency, having an office at 293 Washington Street, Boston. By the contract between the plaintiff and the Hotel Corporation the plaintiff agreed to represent the Hotel Corporation throughout the New England States, to establish subagencies in that territory, and to use every possible endeavor personally and through his agents to book persons for the Inside Inn; and the defendant agreed: "That you [the plaintiff] shall be our exclusive agent in said territory;" to pay the plaintiff twenty-five cents a day for each person sent by him to the hotel; and to furnish the plaintiff with all necessary "literature."

Immediately upon being thus appointed the exclusive agent of the Hotel Corporation the plaintiff prepared and issued a "Fall Edition" of his "Tickets and Tours," in which *inter alia* a description is given of the Jamestown Exposition and of the Inside Inn. Following this is the statement that the plaintiff has been appointed New England agent for the exposition "and exclusive representative of the Inside Inn."

The defendant is found by the master to be a ticket and tourist agent, with an office at 298 Washington Street, Boston. On January 11, 1907, he went to Norfolk, Virginia, and called upon the officers of the Hotel Corporation there. At this time he "had seen the contract between the complainant and the hotel corporation, but had not read it, and knew that the company had practically consummated a contract making Beekman its sole representative in New England." The defendant at this interview told these officers "that it was a mistake for the corporation to give an exclusive agency in New England to any one man, and that more business would be brought to the company if all agents were given equal terms," and to enforce his arguments stated that the business done by the plaintiff was insignificant and that the statement was false which was made in the summer edition of his "Tickets and Tours" that certain persons therein named had his tickets and tours for sale. It appeared that the summer edition of this catalogue had been shown to the Hotel Corporation by the plaintiff when he made his contract with it.

The master found that "As a result of the solicitations or representations made by the respondent, the Jamestown Hotel Corporation on or about January 11, 1907, entered into an oral contract with him, whereby it was agreed that the respondent should have the same rights that had been given to the complainant, and that he should be paid by the corporation twenty-five cents *per capita* per day for each guest whom he should secure for the Inside Inn."

The defendant then wrote to all men named in the plaintiff's catalogue except those having places of business in Canada, "and two or three others who appeared to have an independent agency business," telling them that the plaintiff had not an exclusive agency for New England and suggesting to them that they could get paid on the same footing as that upon which the plaintiff and the defendant were to be paid, if they chose to act for themselves and not as sub-agents of the plaintiff. He also wrote to the New York, New Haven, and Hartford Railroad Company, calling attention to the fact that some of the local ticket agents of that railroad company were advertised by the plaintiff as having his tickets and tours on sale, and suggesting that the railroad company would prefer to have all its agents strictly neutral in dealing with tourist concerns.

With respect to these letters the master made this finding: "The purpose of the respondent in sending the letters above mentioned appears from the letters themselves. I do not find that the

respondent was actuated by malice toward the complainant."

The master further found that "The Jamestown Hotel Corporation has never at any time rescinded, or attempted to rescind, its said contract with the complainant;" that "The complainant has never waived any of his rights under the contract, and has never consented to any modification or alteration thereof except with reference to the bond" which is not material; and further, that "The Inside Inn is the only hotel which is located, or, under the contract of the company with the exposition, can be located, within the exposition grounds. The exclusive right to act as agent for the Inside Inn within the New England territory is a valuable right."

Lastly he has found: "There is a strong probability that a large tourist business will be done between Boston and New England and the Jamestown Exposition between April and the close of the exposition in November, and that many passengers will arrange for tours through various tourist agencies. In all probability many more passengers will buy tours and tickets from the complainant if he is the exclusive agent in New England for the Inside Inn than will be the case if other tourist agents also book guests or issue coupons or other devices which are accepted by the Hotel Corporation for accommodations. The damage which he will sustain if the respondent or other persons are allowed to act as agents or to book guests or issue coupons in this manner is incapable of accurate ascertainment. The loss to the complainant will not be merely the loss of the commission of twenty-five cents *per capita* per day, which would otherwise be received from the hotel, but it will be the loss of profits on tours which he might otherwise be able to arrange."

The result of the findings of the master must be taken to be that the defendant induced the Hotel Corporation to break its contract with the plaintiff, but that he did not do this to spite the plaintiff or for the purpose of injuring him, but for the purpose of getting for himself (the defendant) business which the plaintiff alone was entitled to under the contract with the Hotel Corporation, that is to say, to get business which the defendant could not get if the Hotel Corporation kept its agreement with the plaintiff.

Three defences have been set up by the defendant, namely: First, that he had a right to do what he did; second, that the plaintiff does not come into court with clean hands; and third, that the plaintiff has an adequate remedy at law by bringing an action for damages.

1. So far as the first defence is concerned, it is in effect that where A. is under a contract to serve the plaintiff for a specified time, the defendant, knowing that contract to be in existence, is justified in hiring A. away from the plaintiff before the expiration of that time, by giving him (A.) higher wages if he (the defendant) thinks that to be for his (the defendant's) pecuniary benefit. The ground on which the defendant bases this contention is that he has a right to compete with the plaintiff and that the right of competition is a justification for thus hiring away the plaintiff's servant.

We say that this is in effect the defence set up here because it has been settled in Massachusetts that there is no distinction between a defendant's enticing away the plaintiff's servant and a defendant's inducing a third person to break any other contract between him and the plaintiff. That was decided by this court in *Walker* v. *Cronin,* 107 Mass. 555; see p. 567. See also *Moran* v. *Dunphy,* 177 Mass. 485. In other words, this court there adopted the conclusion reached by the majority of the judges of the Queen's Bench in *Lumley* v. *Gye,* 2 El. & Bl. 216. This is also the settled law of the Supreme Court of the United States. *Angle* v. *Chicago, St. Paul, Minneapolis & Omaha Rail-*

way, 151 U. S. 1. And it has been affirmed in England. *Bowen* v. *Hall,* 6 Q. B. D. 333. *Read* v. *Friendly Society of Operative Stonemasons* [1902], 2 K. B. 88. *Glamorgan Coal Co.* v. *South Wales Miners' Federation* [1903], 2 K. B. 545; *S. C.* on appeal, *sub nomine South Wales Miners' Federation* v. *Glamorgan Coal Co.* [1905], A. C. 239.

No case has been cited which holds that a right to compete justifies a defendant in intentionally inducing a third person to take away from the plaintiff his contractual rights.

Not only has no case been cited in which that has been held, but no case has been cited in which that contention has been put forward.

It happens, however, that Mr. Justice Wells in defining the rights of competition has denied the existence of such a justification. In discussing the first count in *Walker* v. *Cronin,* 107 Mass. 555, 564, he said: "Every one has a right to enjoy the fruits and advantages of his own enterprise, industry, skill and credit. He has no right to be protected again competition; but he has a right to be free from malicious and wanton interference, disturbance or annoyance. If disturbance or loss come as a result of competition, or the exercise of like rights by others, it is *damnum absque injuriâ,* unless some superior right by contract or otherwise is interfered with." And it also happens that in *Read* v. *Friendly Society of Operative Stonemasons* [1902], 2 K. B. 88, Darling, J., in discussing the rights of a labor union to induce the plaintiff's employers to break their contract of apprenticeship with him, denied it. He there said: "To resume, I think the plaintiff has a cause of action against the defendants, unless the court is satisfied that, when they interfered with the contractual rights of plaintiff, the defendants had a sufficient justification for their interference — to use Lord Macnaghten's words. This sufficient justification they may have had, and they may prove it; but the facts found by the county court judge and relied on by him as enough do not amount to one; for it is not a justification that 'they acted *bona fide* in the best interests of the society of masons,' *i.e.,* in their own interests. Nor is it enough that 'they were not actuated by improper motives.' I think their sufficient justification for interference with plaintiff's right must be an equal or superior right in themselves, and that no one can legally excuse himself to a man, of whose contract he has procured the breach, on the ground that he acted on a wrong understanding of his own rights, or without malice, or *bona fide,* or in the best interests of himself, nor even that he acted as an altruist, seeking only the good of another and careless of his own advantage."

It is hard to see how this court could have decided *Garst* v. *Charles,* 187 Mass. 144, as it did were it the law that self interest is a justification for intentionally interfering with a plaintiff's contractual rights. The same is true of *Bowen* v. *Hall,* 6 Q. B. D. 333, if not of *Read* v. *Friendly Society of Operative Stonemasons* [1902], 2 K. B. 88.

The argument here urged by the defendant comes from not distinguishing between two cases which not only are not the same but are altogether different so far as the question now under consideration is concerned.

If a defendant by an offer of higher wages induces a laborer who is not under contract to enter his (the defendant's) employ in place of the plaintiff's, the plaintiff is not injured in his legal rights. But it is a quite different thing if the laborer was under a contract with the plaintiff for a period which had not expired and the defendant, knowing that, intentionally induced the laborer to leave the plaintiff's employ by an offer of higher wages, to get his (the

laborer's) services for his (the defendant's) benefit.

A plaintiff's right to carry on business, that is, to make contracts without interference, is an altogether different right from that of being protected from interference with his rights under a contract already made. The existence of both rights and the difference between the two is recognized by Wells, J. in *Walker* v. *Cronin,* 107 Mass. 555; the first count in that case went on the first right, and the second and third counts on the second right. Again, the existence of the two is recognized and stated by Holmes, J. in *May* v. *Wood,* 172 Mass. 11, 14, 15.

Where the plaintiff comes into court to get protection from interference with his right of possible contracts, that is, of his right to pursue his business, acts of interference are justified when done by a defendant for the purpose of furthering his (the defendant's) interests as a competitor. It was this right that the plaintiff came into court to assert in *Carew* v. *Rutherford,* 106 Mass. 1, *Walker* v. *Cronin,* 107 Mass. 555 (so far as the first count was concerned), *Vegelahn* v. *Guntner,* 167 Mass. 92, *Plant* v. *Woods,* 176 Mass. 492, *Martell* v. *White,* 185 Mass. 255, *Berry* v. *Donovan,* 188 Mass. 353, and *Pickett* v. *Walsh,* 192 Mass. 572 (so far as the third prayer for relief was concerned); while the cases of *Walker* v. *Cronin,* 107 Mass. 555 (so far as the second and third counts were concerned), *May* v. *Wood,* 172 Mass. 11, *Garst* v. *Charles,* 187 Mass. 144, and *Pickett* v. *Walsh,* 192 Mass. 572 (so far as the second prayer for relief was concerned), are cases of the second class.

There are statements in opinions in Massachusetts and in England that a defendant is not liable for interference with a plaintiff's rights in both of these two classes of cases unless he acts maliciously within the meaning of malice as used in these opinions. In the case at bar there was no necessity of proving spite or ill will toward the plaintiff. This is not a case where there was an abuse of what, if done in good faith, would have been a justification, but a case where the defendant with knowledge of the contract between the plaintiff and the Hotel Corporation intentionally and without justification induced the Hotel Corporation to break it. That is proof of malice within the meaning of that word as used in these opinions. *South Wales Miners' Federation* v. *Glamorgan Coal Co.* [1905], A. C. 239.

We do not rest our decision in this case (as we have been urged to do by the plaintiff) on cases like *Peabody* v. *Norfolk,* 98 Mass. 452, *Lumley* v. ~~*Wagner,*~~ 1 DeG., M. & G. 604, *Stiff* v. *Cassell,* 2 Jur. (N. S.) 348, *Donnell* v. *Bennett,* 22 Ch. D. 835, *Manchester Ship Canal Co.* v. *Manchester Racecourse Co.* [1901], 2 Ch. 37, *Manhattan Manuf. Co.* v. *New Jersey Stock Yard Co.,* 8 C. E. Green, 161, *Western Union Telegraph Co.* v. *Rogers,* 15 Stew. (N. J.) 311, and *Baker* v. *Pottmeyer,* 75 Ind. 451. Those are cases where the plaintiff, having a contract which a court of equity would specifically enforce in whole or in part, brings a bill for specific performance against the other party to the contract, and as ancillary to a degree for specific performance against the other party to the contract asks that the third person who is about to contract or has contracted with him be also enjoined. The plaintiff made out his right to maintain this suit against the defendant alone by proving that he in fact induced the Hotel Corporation to break its contract with the plaintiff. In case of ordinary contracts (that is to say, contracts which will not be specifically enforced in equity), a plaintiff does not go far enough to render a defendant liable for unlawful interference with his contractual rights, when he proves that the defendant, in using the ordinary methods

of promoting and increasing his own business, obtained business from the other party to the plaintiff's contract which that other party could not have given him without breaking his contract with the plaintiff, and that this was known to the defendant. To charge the defendant in such a case the plaintiff must prove that it was the act of the defendant which brought about the breach of the contract with the plaintiff.

Whether contracts which equity will specifically enforce stand on a different footing need not be considered.

2. [A portion of the opinion which has no relation to the subject matter of this report is omitted.]

. . . . . .

3. The finding of the master as to the damages which the plaintiff is likely to suffer shows that an action at law would not give him an adequate remedy. Where the plaintiff proves that the defendant unlawfully interferes or threatens to interfere with his business or his rights under a contract, and further makes out in proof that damages will not afford an adequate remedy, equity will issue an injunction. The issuing of injunctions in *Vegelahn* v. *Guntner,* 167 Mass. 92, and similar cases, the last of which is *Pickett* v. *Walsh,* 192 Mass. 572, are decisions directly in point. As to which see *Sherry* v. *Perkins,* 147 Mass. 212.

The terms of the injunction should be in substance that the defendant be restrained from directly or indirectly acting as agent of the Hotel Corporation within the New England States, and from preventing or seeking to prevent, directly or indirectly, the plaintiff from acting as exclusive agent of the Hotel Corporation for that territory.

So ordered.

G. R. Nutter (*H. F. Lyman* with him), for the plaintiff.

C. W. Rowley, for the defendant.

Reynolds *v.* Davis.

Edward T. Reynolds *et als. v.* George H. E. Davis *et als.*

Essex. April 3, 1908.
198 Mass. 294.

Legality of trade unions and strikes. Union rules and by-laws. Doing any acts in furtherance of unlawful strike enjoined.

Loring, J. This is a bill brought apparently by the members of nine firms and thirty-five individuals, and purports to be brought against seven unincorporated associations (a building trades council and six local trade unions) and twenty-eight individuals. The relief sought is an injunction restraining the defendants from interfering with the business respectively carried on by the several plaintiffs. The place of business of each and all the plaintiffs and defendants is in the city of Lynn.

The case was sent to a master and came on for hearing in the Superior Court on the master's report to which no exceptions had been taken. A final decree was entered directing that the bill be dismissed as to three of the plaintiffs named on a motion to that effect made by them, and as to one defendant on the merits, and restraining the remaining defendants in certain particulars therein set forth. From this decree the defendants who were enjoined took an appeal which is now before us.

The principal contention of the defendants is that on the facts set forth in the master's report the bill should have been dismissed.

It appears from the master's report that before May 1, 1906, "although some of them [the plaintiffs] had been running what was practically an 'open shop,' yet many of the complainants had at least some sort of verbal understanding, if not an actual agreement, with the various unions respecting hours, wages, apprentices, and the employment of non-union help, which would expire on that date."

At some time not fixed by the master the plaintiffs (with the exception of

Keyes, Eastman and Swan), acting with others, signed and issued the following advertisement which was headed "Lynn Open Shops":

"The following firms propose in the future to do a free and unrestricted business under the following Open Shop Rules, which will enable us to pay our employees according to their merits, and insure to the public a fair and honest return for their money, which cannot be done under the Closed Shop.

"Open Shop Rules.

"1. There shall be no discrimination for or against any workman on account of membership or non-membership in any organization.

"2. There shall be no restriction as to the number of apprentices to be employed when of proper age, or as to the nature of the work which workmen of any class shall do.

"3. That eight (8) hours shall constitute a day's work.

"4. Overtime shall not be permitted except when absolutely necessary, and under no circumstances to be continued, all overtime to be paid for as regular time. Sundays and Legal Holidays, or the days on which the same are celebrated, are to be paid for as double time.

"5. Grievances arising among the workmen will be settled in conference between the employer and the workmen already involved."

This advertisement was signed by twenty-nine master carpenters and builders, eight master painters and paper hangers, one machinist and millwright, six plumbers, steamfitters, and tinsmiths, four stairbuilders and dealers in building supplies, one dealer in lumber and "builders' finish," and three carrying on the business of "Gas and Electrical Construction."

The six trade unions named as defendants are unions of (1) carpenters, (2) lathers, (3) painters, decorators, and paperhangers, (4) plumbers, (5) sheet metal workers, and (6) steamfitters and helpers.

On May 1, 1906, these "Open Shop Rules" were posted by the plaintiffs in their several shops, and thereupon the union men members of the unions named as defendants left work with "some" exceptions; in these instances the union men "remained at work after the open shop rules were posted and until a non-union man was put at work on the same job with themselves, when they immediately left. In one or two cases the union men returned when the non-union men ceased working."

Without going into details it is manifest that the strike here in question was a strike against the open shop, as the plaintiffs proposed to carry on an open shop, and for the closed shop as it had previously been carried on by many of the plaintiffs and by the defendants.

It is settled in this Commonwealth that the legality of a combination not to work for an employer, that is to say, of a strike, depends (in case the strikers are not under contract to work for him) upon the purpose for which the combination is formed, — the purpose for which the employees strike.

We have excluded all cases where the employees are under contract to work for their employer, because it is now settled in this Commonwealth at least that competition and similar defenses are not a justification for inducing an employee or other person to commit a breach of a contract and thereby interfering with the business of the employer. *Beekman* v. *Marsters,* 195 Mass. 205. From that it would seem to follow necessarily that, in case of persons under a contract to work, a strike or combination not to work, in violation of that contract, to secure something not due to them under that contract, would be a combination interfering without justification with the employer's business. See in this connection *Aberthaw Construction Co.* v. *Cameron,* 194 Mass. 208.

Instances of strikes where the pur-

pose sought to be obtained by the strike has been held to make the combination not to work an illegal one, are to be found in *Carew* v. *Rutherford,* 106 Mass. 1; *Plant* v. *Woods,* 176 Mass. 492; *Pickett* v. *Walsh,* 192 Mass. 572; *Aberthaw Construction Co.* v. *Cameron,* 194 Mass. 208.

What, then, on the facts found in the master's report was the purpose of the strike here in question?

The question of the purpose of the strike does not seem to have been directly in the master's mind in framing his report, and for that reason his findings of fact are not directed to this issue. But in our opinion the facts were abundantly proved which made the strike here in question an illegal combination, that is to say, an interference with the business which each plaintiff was conducting, for which interference there was not a justification.

The occasion of the strike, as we have said, was the posting of the open shop rules. The strike was manifestly a strike against working under those rules. To understand the significance of the defendants' combination not to work under these open shop rules it is necessary to state what was proved to have been the condition under which many of the plaintiffs had been conducting their business before these rules were posted.

Most of the plaintiffs had been conducting their business under an oral understanding, if not an actual agreement, with the defendant local unions.

It appears that the defendant local unions were affiliated with the Building Trades Council of Lynn and Vicinity, also named as a party defendant. The Building Trades Council of Lynn and Vicinity appears to be an unincorporated association made up of delegates from the local unions with which it is "affiliated," including the six local unions named here as defendants.

By the working and trade rules of this council every grievance which a member of a local union affiliated with the council has against his employer is to be investigated by the executive board of the council, and if the employer does not comply with the decision of the executive board he is reported to the council as "unfair," and upon being declared "unfair" by the council the executive board is "to again interview" the employer and if the employer continues in his refusal to comply with the demands of the council the board "shall at once remove all union men" from his employ, and "no union man shall be allowed to go to work" for him until he is "again placed upon the fair list by the . . . council."

In other words, the members of the defendant unions, by the terms of their own rules, undertook to decide each case of an individual grievance between a single employee and his employer, to decide what should be done by the employer as well as by the employee, and to enforce compliance with its decision by threatening and instituting a strike in which all members were bound to join. What we mean by an individual grievance is (for example) the discharge by his employer of a member of the union for drunkenness or inefficiency.

This statement of the make up of the defendant unions and the Trades Council with which they are affiliated makes plain what the plaintiffs were aiming at in the open shop rules. And it also makes plain what was the main or one of the main purposes for which the strike in question was instituted by the individual defendants.

The strike in question was a combination for the purpose of making the Trades Council, composed of delegates from the unions of which the individual defendants are members, the arbiter of all questions between individual employees and their employers.

It purports to include questions arising under contracts still in existence between the two. To enforce the employer to submit to a delegate body of employees his rights under an existing

contract by a combination for that purpose is not a justifiable interference with their employer's business.

And in cases arising outside existing contracts it is an attempt to force compliance on the part of employers with the decision of this delegate body of employees as to whether a single employee is or is not to work for the employer, which decision is to be enforced by a strike. Such a strike would be a strike in the nature of a sympathetic strike, that is to say, it is a strike not to forward the common interests of the strikers but to forward the interests of an individual employee in respect to a grievance between him and his employer where no contract of employment exists.

We do not mean to say that a labor union cannot combine to support a committee to take up individual grievances in behalf of the several members. What we now decide to be illegal is a combination that such grievances (that is to say, grievances between an individual member of a union and his employer which are not common to the union members as a class) shall be decided by the employees and that decision enforced by a strike on the part of all. In this respect this case comes within the principle upon which the second point in *Pickett* v. *Walsh*, 192 Mass. 572, was decided. See p. 587, *et seq.*

It follows that the plaintiffs were entitled to an injunction restraining the defendants from combining together to further the strike in question, and from doing any acts whatever, peaceful or otherwise, in furtherance thereof, including the payment of strike benefits and putting the plaintiffs on an unfair list.

The Building Trades Council and the six unions were not properly joined as parties defendant as unincorporated associations, *Pickett* v. *Walsh*, 192 Mass. 572, and they should be stricken from the title of the cause. The pleader seems to have thought that the reason why all the members of these unincorporated associations need not be joined as defendants is because their names "are to your complainants unknown," and he has undertaken to make them parties by an allegation "that John Doe and Richard Roe and sundry other persons whose names and whose several residences or places of business are to your complainants unknown, are the remaining members of said respondent unions and the respondent Building Trades Council, and are participants in the unlawful acts hereinafter set forth." The rule of equity pleading which dispenses with the joinder of all members of an unincorporated association depends upon their being members of a class who have a common interest and are too numerous to be made individually parties defendant even if their names are known to the plaintiff. The proper way of bringing them before the court is to join as parties defendant persons who are alleged to be and are proper representatives of the class, describing the class to which the members belong and stating that the members are too numerous to be joined as parties defendant. See *Pickett* v. *Walsh*, 192 Mass. 572.

No objection has been made to the joinder as parties plaintiff in this suit of the nine firms and thirty-five individuals, each carrying on a separate business.

It is manifest that the decree entered is not so sweeping as that to which the plaintiffs were entitled. No appeal however was taken by the plaintiffs, and of this the defendants do not complain.

But the bill must be amended as to the parties defendant. Upon the bill being amended within sixty days, the decree may be modified as hereinbefore set forth, and on being so modified, affirmed. Otherwise the entry must be bill dismissed.

So ordered.

KNOWLTON, C.J., dissenting.

The case was argued at the bar in

March, 1907, before Knowlton, C.J., Hammond, Loring, Sheldon, and Rugg, JJ., and afterwards was submitted on briefs to all the justices.

F. W. Mansfield, for the defendants.

R. Clapp, for the plaintiffs.

ROBERT CASSON *et als. v.* W. D. McINTOSH *et als.*

SUFFOLK. JULY 7, 1908.
199 Mass. 443.

Contempt of court in violation of injunction.

Petition, filed in the Superior Court for the county of Suffolk October 8, 1906, for an attachment for alleged contempt in the violation of a temporary injunction issued by that court against the defendants in a bill in equity entitled *Robert Casson et al.* v. *Amalgamated Woodworkers of America et al.* The petitioners were contractors.

The petition was heard before *Fox,* J., who, as stated in the opinion, adjudged the respondents McIntosh and Cameron in contempt and ordered them to pay fines, and they appealed.

The facts are stated in the opinion.

G. F. Williams (*J. C. Madden* with him), for the respondents.

R. Clapp (*J. J. Feely* with him), for the petitioners.

LORING, J. This case comes up on a report. It is a petition for attachment for contempt for violation of a temporary injunction issued by the Superior Court in June, 1906. The injunction restrained McIntosh and Cameron, as well as others, from (among other things) "interfering with the complainants' business by obstructing, annoying, intimidating or interfering with any person or persons who now are or may hereafter be in their employment." The ground of the petition was intimidation of two of the petitioners' employees, Godfray and Andrews by name. The only witnesses called by the petitioners were the two employees and one Watson, the secretary of the Carpenters' District Council, a body made up of delegates from the several unions over which it had jurisdiction.

The two employees testified in substance that they were members and one Potts was the business agent of Local Union 33 of the United Brotherhood of Carpenters and Joiners of America; that during the week of August 20, 1906, Potts called upon them while at work for the petitioners and told them that the petitioners had been declared to be an "unfair" firm. Godfray testified that Potts told him that he would have "to quit this noon," while Andrews testified that Potts told him that "it was up to me whether I should quit or not." Afterwards each employee received a notice dated September 11, 1906, signed by Watson (the other witness called by the petitioners), who (as we have said) was secretary of the Carpenters' District Council, notifying him that "charges have been preferred against you for violation of Article 4, C. D. C. on refusing to stop when ordered." They were further notified to attend a meeting of the council on September 20, "for trial of the charge."

Article 4 referred to in the notice is in these words: "That all firms or jobs placed unfair, it shall be the duty of the business agents to remove all men in their employ; any member failing to comply with the demand of the business agent, he shall prefer charges against said member at the next meeting of the executive Board; upon conviction thereof, he shall be fined not less than $10."

There was also evidence that McIntosh presided over the meeting held on September 20, and that at that meeting charges against both employees were read by Cameron,[1] who acted as tem-

[1] It appeared that McIntosh was president and Cameron was "business agent" of the Carpenters' District Council, and that Potts was "simply a delegate to the council from" the local union of which Godfray was a member.

porary secretary, and that the two employees were called upon to defend themselves.

It is not necessary to state in detail what took place then and afterwards, for the judge "found the testimony sufficient to establish the responsibility of McIntosh and Cameron for the notice of September 11." The whole finding is in these words: "From the foregoing facts, I found the testimony sufficient to establish the responsibility of McIntosh and Cameron for the notice of September 11, and that notice, taken in connection with the rules of the association and the doings of Potts, amounts to a demand upon the men to whom it was sent to quit work under the threat of a fine. I, therefore, found that McIntosh and Cameron violated the injunction and ordered them to pay a fine of $20 each." The general finding that McIntosh and Cameron violated the injunction is a conclusion based upon the special finding stated above. The sole question before us is whether the evidence was sufficient to warrant the special finding, and it is therefore of no consequence that the evidence warranted a finding (if it did warrant such a finding) that what took place on September 20 was a violation of the injunction by these defendants although they were not responsible for the notice of September 11.

As to the special finding, the notice of September 11 was signed by Watson, not by the respondents. There was no evidence that Watson in signing it acted under the direction of the respondents or either of them. Nor was there any evidence that the respondents took any part in the issue of the notice directly or indirectly. The fact that McIntosh and Cameron acted on the notice at the meeting on September 20 is not evidence that they were responsible for the notice.

It follows that the special finding of the judge was not warranted by the evidence, and that the fines paid into court by McIntosh and Cameron must be returned to them.

The Amalgamated Woodworkers of America, Local No. 24, and the other unincorporated unions were improperly joined as defendants, and the title of the suit has been changed accordingly.

So ordered.

L. D. Willcutt and Sons Company *v.* Jeremiah J. Driscoll *et als.*

Suffolk. October 24, 1908.

200 Mass. 110.

Coercion of union members by threat of fine enjoined.

Bill in equity, filed in the Superior Court on July 19, 1906, and amended on November 22, 1906, by a corporation, engaged in the business of constructing buildings, against (as amended) certain individuals as officers and members of two voluntary unincorporated associations, the Bricklayers' Benevolent and Protective Union Number Three, and the Stonemasons' Benevolent and Protective Union Number Nine, both of Boston and the vicinity, and all other members of those unions, being upwards of eighteen hundred in number and most of them to the plaintiff unknown, the individuals named being the officers chosen by those unions for the management of their affairs and for doing the acts for and in behalf of the unions which were complained of in the bill, to enjoin the defendants from combining and conspiring by threats or intimidation to prevent any person or persons from entering the employ of the plaintiff or remaining therein, and particularly by the imposition of fines and penalties upon members of those unions who desired to work for the plaintiff, from inducing or persuading in any way persons then, or thereafter, in the employ of the plaintiff from leaving such employment and breaking their contracts of employment, from imposing any fines or penalties or exercising any compulsion of any kind or using any threats or intimidation to

prevent any person or persons, whether members of those unions or not, from entering into and continuing in the employ of the plaintiff, and for further relief.

In the Superior Court the case was heard by *Gaskill,* J., who made a memorandum of findings of fact, which so far as they are necessary to an understanding of the case appear in the opinion of the majority of the court. The judge concluded his findings of fact with the following statement:

"The question resolves itself into this: In case of a justifiable strike, has the contractor the right to invoke the aid of the court to prevent the labor union from imposing a fine or taking action to impose one upon one or more of its members under its rules to induce them to leave the contractor's employ to his injury. I think not.

"I am of opinion that Reagan was not justified in threatening the imposition of a fine. Decree for plaintiff against Reagan, bill dismissed as to other defendants." Reagan threatened a journeyman mason who previously had been a member of one of the unions with a fine of $100 if he continued to work. The judge made a final decree enjoining the defendant Reagan, and dismissing the bill as to the other defendants. The plaintiff appealed.

The case was argued at the bar in March, 1907, before *Knowlton,* C.J., *Morton, Loring, Sheldon, and Rugg,* JJ., and afterward was submitted on briefs to all the justices.

E. A. Whitman, for the plaintiff.

F. W. Mansfield, for the defendants.

Hammond, J. This bill, although originally brought against two unincorporated associations or labor unions by name, has now been amended, so that it runs only against certain individuals as officers and members of these associations and against the other members of those associations as represented by these individuals. No question is made that the defendants do not sufficiently represent all the members of both unions; and the bill is not open to objection upon this ground. *Pickett* v. *Walsh,* 192 Mass. 572, 589, 590, and cases there cited.

The questions before us are raised upon a report of the facts found by the judge of the Superior Court who heard the case. They grew out of a trade dispute between the plaintiff and the members of the unions who were in its employ. In April, 1906, these unions adopted a code of working rules, in which, beside some minor demands not now material, they demanded that wages be increased five cents an hour, that all foremen should be members of the unions, that the business agent of the unions should be allowed to visit any building under construction to attend to his official duties, and that wages should be paid during working hours. The plaintiff declined to accept these rules, and a strike followed.

By the constitution and rules of the unions it appeared that a code of fines and penalties was established by the International Union, an association composed of these and other similar unions throughout the country, and that this code was being actively enforced by the local unions. One rule provided that any member violating any section of the working code should be fined upon conviction not less than five nor more than twenty-five dollars, one of these sections being that "No member of the Union shall work with a non-union man who refuses to join the Union." Various other penalties were provided, varying from five to five hundred dollars for each offence, to be imposed upon persons designated as "common scabs," "inveterate or notorious scabs," and "Union wreckers," these terms being applied to those who in different ways persist in working after a strike has been called. These fines in their operation are likely to be coercive in their nature.

This code was actively enforced by the unions, and most of the members of

the unions who left their work did so through fear of the fines that would be imposed upon them if they continued to work. The defendants Driscoll and Reagan on one occasion found two men at work for the plaintiff, one a journeyman who had been and the other a foreman who then was a member of the union. Reagan threatened the journeyman with a fine of $100 if he continued to work, and Driscoll notified the foreman that he was called out. Both refused to leave. Driscoll reported the fact at a meeting of the union and a vote was passed that charges be preferred against the men for working contrary to the rules. A preliminary injunction was issued in this case, and no further steps were taken under the vote.

The defendants established strike headquarters, and provided a strike fund from which payments were made to the strikers and other men out of work. Some of the defendants made constant visits to a job of the plaintiff, generally at noon time, to persuade men, whom the plaintiff had hired, to leave its employ. They offered as inducements in some cases to non-union men membership without the full payments usually required, and in other cases work elsewhere. Men frequently left the plaintiff's employ after these talks, in some cases stating that they would like to work but could not run the risk of being fined. The defendant Driscoll induced two men to go who otherwise would have continued at work, by paying them with funds of the unions the wages due them from the plaintiff and providing them with transportation to Utica, New York, where he had secured other work for them.

The plaintiff was constructing other buildings at Fairhaven and at Andover, which were within the districts of other unions; and the union men employed by the plaintiff on those jobs also struck. It was found however that these men were not under the control of the defendants, though it did fairly appear that these strikes were a direct result of the strike in Boston, since all these unions were affiliated together in the International Union and all members of the unions were familiar with what should be done in such cases.

It was admitted that the defendants were not persons of financial responsibility, and the judge found "that the acts of the defendants as above set forth were calculated to interfere and did interfere with the performance of the plaintiff's contracts for the construction of buildings, and had they continued, would have seriously embarrassed the plaintiff in the prosecution of its business, and that such consequences were contemplated by the defendants in their endeavor to force the plaintiff to accept their working rules to govern the management of its business."

As already stated, the strike had four objects. Of these the demand for an increase of wages was properly enforceable by a strike. The demand that wages should be paid during working hours amounts merely to a demand for a shorter day, and also was properly enforceable by a strike. The reasonableness of such demands we have not the means of determining; and it is settled that such matters are best left to be adjudicated in the freedom of private contract between the interested parties. More difficult questions are presented by the demands that all foremen shall be members of the unions, and that the business agent of the unions shall be allowed to visit any building under construction. See as to the first of these points a very interesting article by Professor Smith, 20 Harvard Law Review, 431, note 1. But it is unnecessary under the circumstances to determine these questions, as the plaintiff replied with a bare refusal of all the demands.

We are of opinion therefore that this strike must be regarded as simply a strike for higher wages and a shorter

day. It was not a mere sympathetic strike, as in *Pickett* v. *Walsh,* 192 Mass. 572, 587, or one whose immediate object was only remotely connected with the ultimate object of the strikers, as in *Plant* v. *Woods,* 176 Mass. 492. It was a direct strike by the defendants against the other party to the dispute, instituted for the protection and furtherance of the interests of the defendants in matters in which both parties were directly interested and as to which each party had the right, within all lawful limits, to determine its own course. Such a strike must be treated as a justifiable strike so far as respects its ultimate object.

But however justifiable or even laudable may be the ultimate objects of a strike, unlawful means must not be employed in carrying it on; and it is contended by the plaintiff that the use of fines and threats of fines, under the circumstances disclosed in the record, are unlawful. The question is stated by the trial judge in the following language: "In case of a justifiable strike, has the contractor the right to invoke the aid of the court to prevent the labor union from imposing a fine [which the court has found to be coercive in its nature] or taking action to impose one upon one or more of its members under its rules to induce them to leave the contractor's employ to his injury?" Under the findings of the judge it would seem that the question is not intended to be quite so broad as otherwise might be inferred from its language. The language is broad enough to include the case where the employee is under a contract to stay with his employer and where to leave would be a violation of that contract. But no such state of things appears upon the record. The plaintiff "hired its masons by the day and paid them on the basis of the number of hours worked, and it might have discharged them and they might have left at the close of any day." The question must therefore be considered as applying only to cases where the employee by leaving violates no contractual right of the employer.

The question how far the imposition of fines by an organization upon its members where the effect is to injure a third party is justifiable, was considered by this court in *Martell* v. *White,* 185 Mass. 255; and it was there adjudged that the imposition of such a fine by which members of the organization were coerced into refusing to trade with the plaintiff, not a member, to his great damage, was inconsistent with the ground upon which the right to competition in trade is based, and as against him was not justifiable. In the course of the opinion the case of *Boutwell* v. *Marr,* 71 Vt. 1, was cited, in which the same conclusion was reached. In *Martell* v. *White* five justices sat, and four of them, being a majority of the whole court, concurred in the ground upon which it was decided. The case was carefully presented by counsel, the questions involved were regarded as important, and there was a difference of opinion among the judges who sat in it. It was therefore considered at great length; and the conclusion was reached after a most exhaustive discussion and the most careful deliberation. It stands as a solemn adjudication by this court after such discussion and deliberation. So far as respects the trend of judicial opinion and authority there has been no change since the decision was announced unfavorable to it or to the ground upon which it was reached. On the contrary, so far as we are aware, whenever the case has been mentioned by members of the profession, whether they be judges engaged in the practical administration of the law, or professors teaching the students of our schools the true theory of legal principles, it has been received with favorable comment. See *Brennan* v. *Hatters of North America,* 44 Vroom, 729; *Allis-Chalmers Co.* v. *Iron Moulders' Union No. 125,* 150 Fed. Rep. 155, 178; 20 Harvard Law Review, 355, 356; 17 Green Bag, 210. There is every rea-

son why the doctrine of *stare decisis* should apply; and, so far at least as respects this Commonwealth, the case must be held as settling the correctness of the principle upon which the decision was based.

That principle, if applicable to the facts of this case, is decisive. The majority of the court are of the opinion that it is applicable, and hence that there should be a decree for the plaintiff enjoining intimidation or coercion by fines.

Under ordinary circumstances this opinion would end here. But inasmuch as a minority of the court still think that the principle laid down in *Martell* v. *White,* with reference to intimidation by fines imposed by an organization upon its members, is not correct, and also, perhaps, that, even if correct, it is not applicable to the facts of this case, and are unwilling to accept that principle as law in this Commonwealth notwithstanding the authority of that case, it may be well to say something in addition to what was there said. We are also somewhat influenced to take this action by reason of the importance of the question and its relation to a part of the law still in the nebulous but clearing stage.

Before entering more fully upon the discussion it is well to get a clear conception of what the case is. To begin with, it is not a contest between the members of two competing labor unions, as was *Plant* v. *Woods,* 176 Mass. 492, nor is it a conflict between an organization and one of its members in a matter in which no third party is interested. Neither does the plaintiff corporation contend that it has any right to compel the intimidated workman to enter its employ. Nor is it seeking, in behalf of a member of a union, to enforce or defend the right of such member to be free from a fine or threat of a fine. The plaintiff has no concern with the imposition of fines by a union upon its members unless, and only so far as, such an imposition is in violation of a right of the plaintiff. Even if the fine be illegal the plaintiff has no standing in court to complain unless some one of its rights is invaded to its damage. In a word, the case is not between the party imposing the fine and the person fined, nor between the person fined as such and a third party who suffers, but on the contrary it is between such third party and the party imposing the fine. If it were only between the person fined and the party imposing the fine, then with some degree of plausibility it might be said that the former had no right to complain, or at least had waived that right; but it is manifest that neither of the immediate parties to the fine can, either by an agreement among themselves or by waiver, justify the invasion of the right of a third party, if any he has, to object to it.

What is the complaint of the plaintiff? It is a corporation engaged in the construction of buildings and employing a number of men. Its men left its employ on a strike. To keep them away the defendants threatened with fines such as were members of the unions, and by that means kept them away from the plaintiff when otherwise they would have stayed, — all to the great damage of the plaintiff. Shortly stated the case is this: The plaintiff's men are being coerced by threats of a fine to leave its employ, greatly to its injury, the fines to be levied in accordance with the by-laws of a voluntary association of which the proposed victims are members. This injury to the plaintiff is intended by the defendants. Has the plaintiff any standing in equity to an injunction against the infliction of such injury?

It is to be premised that the right which the plaintiff seeks to have protected against the acts of the defendants arises from no contract or statute, but out of the nature of things. It is one of the large body of rights which have their foundation in the fitting necessities of civilized society. It is the common

law right to a reasonably free labor market. Vice Chancellor Stevenson, in speaking of it, says it has been called a "probable expectancy," and describes it as "the right which every man has to earn his living or pursue his trade without undue interference." *Jersey City Printing Co.* v. *Cassidy,* 18 Dick. 759, 765. He further remarks (pp. 765, 766): "It will probably be found . . . that the natural expectancy of employers in relation to the labor market and the natural expectancy of merchants in respect to the merchandise market must be recognized to the same extent by courts of law and courts of equity and protected by substantially the same rules. It is freedom in the market, freedom in the purchase and sale of all things, including both goods and labor, that our modern law is endeavoring to insure to every dealer on either side of the market." And in *Atkins* v. *Fletcher Co.,* 20 Dick. 658, 664, the same judge says: "The elemental right of the employer of labor which the courts recognize to-day no doubt is the right to employ, while the corresponding right of the workman is the right to be employed. In other words, the right to buy labor and the right to sell labor are recognized by the law, and their enjoyment is greatly impaired or destroyed unless freedom in the labor market — freedom on both sides of the labor market — is maintained. Each party to a contract for the sale of labor has an interest in the freedom of the other party with respect to making the contract." In the words of Lord Lindley in *Quinn* v. *Leathem* [1901], A. C. 495, 534, "A person's liberty or right to deal with others is nugatory unless they are at liberty to deal with him if they choose to do so." This right of the employer is conclusively established by the numerous cases which hold that he may maintain an action against those who by intimidation prevent persons from entering into his employ. See remarks of Lord Halsbury in *Allen* v. *Flood* [1898], A. C. 1, 71, 72. In our own reports such a case may be found in *Vegelahn* v. *Guntner,* 167 Mass. 92. This is the right — the right to a free labor market — which the plaintiff asserts has been invaded by the defendants, and for which he seeks protection.

The defendants also have rights. They have the right to work or not to work, to sell their labor upon such terms as they see fit and to combine for the purpose of getting more pay or a shorter day. And for the purpose of strengthening their organization and making it more effective they have the right to make appropriate by-laws for its internal management, and for the regulation of the conduct of its members toward each other in matters affecting the general interests of the body; and they may enforce obedience to such by-laws and regulations by fines or other suitable penalties.

But not much progress is made by this general statement of the rights of the respective parties. We are still only on the skirmish line. In the jurisprudence of any civilized country there are but few, if any, absolute rights, — rights which bend to nothing and to which everything else must bend. The right to one's life would seem to be quite absolute, but it must yield to the private right of self-defense and to the public right to punish for crime. And so in the case before us, neither the right of the plaintiff to a free labor market nor the right of the union to impose a fine upon its members is absolute. Neither is to be considered apart from the other, or without reference to any other conflicting right, whether public or private; but each must be regarded as having in the rules of human conduct its own place beyond the limits of which it must not go. Moreover it must be borne in mind (what sometimes seems to be forgotten by the actors upon each side of such controversies) that the controversy is not a warfare in the sense that for the time being the usual rules of

conduct are changed, as in the case of an actual war between two countries. There is no martial law in these cases, no change in the ordinary rules of society, but these rules remain the same as before, commanding what was theretofore right and prohibiting what was theretofore wrong.

The right of an employer to free labor is subject to the right of the laborer to hamper him by many expedients short of fraud or intimidation amounting to injury to the person or property of those who desire to enter his employ, or threats of such injury. For instance, persuasion not amounting to such intimidation is lawful, and perhaps the same may be said of social pressure even when carried to the extent of social ostracism, not including however any threat in a business point of view. See *Vegelahn* v. *Guntner*, 167 Mass. 92; *Jersey City Printing Co.* v. *Cassidy*, 18 Dick. 759, 769; 20 Harvard Law Review, 267. Social rights and privileges must take care of themselves. The law cannot prescribe with whom one shall shake hands or associate as a friend.

So long also as the by-laws of a union relate to matters in which no one is interested except the association and its members, and violate no right of a third party or no rule of public policy, they are valid. Fines may be imposed, for instance, for tardiness, absence, failure to pay dues, or for misconduct affecting the organization or any of its members; and for numerous other acts. It cannot be successfully contended, however, that as against the right of some party other than the association and its members an act, otherwise a violation of the third party's rights, is any less a violation because done by some member in obedience to a by-law. If a member commits an assault upon a person, and is called into court by the Commonwealth upon a criminal complaint, or in a civil action by the victim, he can find no valid ground of defense in the fact that he committed the assault in compliance with the requirements of a contract with some other person, or in obedience to a by-law of an association of which he was a member. So a by-law providing that, upon an order to strike, every employee shall quit work even although such an act should be in violation of a contract then existing between him and his employer for continuous service, and that for failure thus to break his contract the member should be fined, doubtless would be declared invalid. And the principle at the bottom of such a decision is this, namely: An interference with the right of a third party cannot be justified upon the ground that the intruder is acting in accordance with an agreement between him and some other person. In a word, so long as a fine is imposed for the guidance of members in matters in which outside parties have no interest, or in which there is no violation of a right of an outside party, then no such party can complain. But when the right of such a party is invaded, it is no defense, either to the person fined or to those who have imposed the fine, that the invasive act was done in accordance with the by-laws of an association.

In the case before us, standing opposed to each other, are these two rights: the right of the employer to a free labor market, and the right of the striking employees in their strife with him to impair that freedom; and the crucial question is, how far can the latter go? On which side of the line shall stand the matter of coercion by fines imposed by a union upon its members to impair that freedom? Is the employer's right to a free market subject to this system of mutual intimidation and coercion by fines, or is the right to establish such a system subject to the right of the employer to a free market? If the employer's right is not subject to this method of intimidation, then of course as against him it is unlawful. If it is subject to it, then he cannot complain, no matter how severe the blow.

So far as concerns the law in this Commonwealth at least, some things seem to be settled. It is settled that the flow of labor to the employer cannot be obstructed by intimidation or coercion produced by means of injury to person or property, or by threats of such injury. *Vegelahn* v. *Guntner,* 167 Mass. 92. In that case Allen, J., said: "Such an act [picketing as a means of intimidation] is an unlawful interference with the rights both of employer and of employed. An employer has a right to engage all persons who are willing to work for him at such prices as may be mutually agreed upon; and persons employed or seeking employment have a corresponding right to enter into or remain in the employment of any person or corporation willing to employ them. These rights are secured by the Constitution itself. *Commonwealth* v. *Perry,* 155 Mass. 117. *People* v. *Gillson,* 109 N. Y. 389. *Braceville Coal Co.* v. *People,* 147 Ill. 66, 71. *Ritchie* v. *People,* 155 Ill. 98. *Low* v. *Rees Printing Co.,* 41 Neb. 127." See also *Sherry* v. *Perkins,* 147 Mass. 212. And it is unnecessary to cite cases in support of the proposition that such is the great weight of authority elsewhere, even though the ultimate object of the strike be legal.

There can be no doubt that fining is one method of injuring a man in his estate, and that a threat to fine is a threat of such an injury. Indeed this is recognized by the decree made by the trial court in this very case, so far as it affects Reagan, one of the defendants, who it was found had threatened with a fine a man once but not then a member of a union.

It is urged however that although this method of intimidation is generally an invasion of the employer's right to a free market and therefore illegal, yet when the intimidation is exerted by a union upon its members in accordance with its by-laws in a strike whose object is legal, it is justifiable and legal. To this the obvious reply is that the rule of freedom to contract is founded upon principles of public policy, that each party to a contract is interested in the freedom of the other party, that it can make no difference to the public or to the employer (who in the present case is the other party), that the person intimidated is or is not a member of the society intimidating. In either case the injury is the same and is from the same cause, namely, intimidation. The workman is no longer free. In *Longshore Printing Co.* v. *Howell,* 26 Ore. 527, the court, after speaking of the general right of labor unions to make rules, proceeds thus: "It must be understood, however, that these associations, like other voluntary societies, must depend for their membership upon the free and untrammelled choice of each individual member. No resort can be had to compulsory methods of any kind to increase or keep up or maintain such membership. Nor is it permissible for associations of this kind to enforce the observance of their laws, rules and regulations through violence, threats or intimidation, or to employ any methods that would induce intimidation or deprive persons of perfect freedom of action."

The keynote on this matter is struck in *Booth* v. *Burgess,* 65 Atl. Rep. 226, 233, in the following language: "No surrender of liberty or voluntary agreement to abide by by-laws on the part of the employees who are first coerced, made by them when they enter their labor unions, can . . . affect the right of the complainant to a free market, which right he will enjoy for all it may be worth if these employees are permitted to exercise their liberty. The employees may be able to surrender their own right, but they certainly cannot surrender the rights of other parties," citing *Boutwell* v. *Marr,* 71 Vt. 1, and *Berry* v. *Donovan,* 188 Mass. 353. And in *Downes* v. *Bennett,* 63 Kans. 653, 662, there is a recognition of the same doctrine: "This is not the case of

a union or association of persons intimidating its members from engaging in a specific service offered by an employer, and standing ready and open to be entered. In such cases, on a showing of continuous damage caused by inability to secure employees, preventive relief has been afforded." *Boutwell* v. *Marr,* 71 Vt. 1.

An opposite doctrine leads to strange conclusions. For instance, if ten men banded together undertake by coercion to keep two other men from entering an employment, and they do this in order to force the employer, for lack of ability to get the two, to employ them (the ten), the employer's right to a free market is invaded, and if he suffers thereby he may proceed either in equity or law against the ten; but if the ten men first induce the two other men to enroll themselves in the same organization with the ten, then, it is said, the ten men may by fines or threats of fines so intimidate the two men as to frighten them from the employer; and that such intimidation is no violation of the employer's right. A rule of law which leads to such inconsistencies is not to be adopted. It does not distinguish between coercion and non-coercion, but between organized coercion and sporadic coercion. It makes a distinction entirely foreign and immaterial to the ground upon which the right to a free market is based.

If it be said that fines are not in themselves illegal, and that consequently their use cannot be illegal, the answer is that when they are used as a method of coercion and create a kind of coercion inconsistent with the right of a person they are, as against that person's right, illegal. If it be said, as we have heard it said, that fines are innocent and cannot be illegal because they are used by all governments as a method of punishing criminals, the answer is that if the principle is true that, what a government may do to punish for crime, individuals or societies may do to enforce private rights, then it follows that a by-law providing for imprisonment or even death may be legal.

If it be said that the member fined may take his choice either to leave the organization or abide by its rules to which he has before assented, and that where there is a choice there can be no coercion, the answer is that in almost every conceivable case of coercion short of an actual overpowering of the physical forces of the victim there is a choice. The highwayman, who presents his cocked pistol to the traveller and demands his purse under pain of instant death in case of refusal, offers his victim a choice. He may either give up his purse and live, or refuse and die. In *Carew* v. *Rutherford,* 106 Mass. 1, the victim had a choice either to pay a fine or take the consequences of a refusal. And so the member of a labor union has the choice either to pay the fine or leave the union. Is it difficult to realize what that choice is in these days of organized labor? Is it too much to say that many times it is very difficult, indeed practically impossible, for a workman to get bread for himself and his family by working at his trade unless he is a member of a union. It is true he has a choice between paying his fine and not paying it, but is it not frequently a hard one? May not the coercion upon him sometimes be most severe and effective? Such is not a free choice. And a market filled with such men is not a reasonably free market. In this connection the language of *Boutwell* v. *Marr,* 71 Vt. 1, seems significant and appropriate: "The law cannot be compelled by any initial agreement of an associate member to treat him as one having no choice but that of the majority, nor as a willing participant in whatever action may be taken. The voluntary acceptance of by-laws providing for the imposition of coercive fines does not make them legal and collectible. . . . The fact that the relations and processes deemed essential to a recovery are brought within the membership and

proceedings of an organized body cannot change the result. The law sees in the member of an association of this character both the authors of its coercive system and the victims of its unlawful pressure. If this were not so, men could deprive their fellows of established rights, and evade the duty of compensation simply by working through an association."

If it be said that without fines the same result may be indirectly reached by the organization by exercising two rights, namely, the right to expel a member and the right to charge an initiation fee upon his return, and since the same result may thus be legitimately reached, nobody is harmed if it be reached by fine, the reply is that if the purpose of expulsion and the subsequent initiation fee be each a part of one and the same transaction, namely, the imposition of a fine, and the two acts are in substance the procedure by which the intimidation by fine is exercised, and such is the intention, then there may be a strong reason for holding that such a procedure is one imposing a fine and should be treated as such. Ordinarily, however, each separate act should be treated by itself and its validity judged by itself. The fact that separately and independently executed they incidentally may have the effect of a fine is immaterial on the question of the right to fine. The fact that a result may be incidentally reached in one way does not show that the same result may be lawfully reached in another way.

In considering this question we cannot lose sight of the great power of organization. It should be taken into account when one is considering where the line should be drawn between the right of the employer to a free market and the right of workmen to interfere with that market by coercion through the rules of a labor union. It is not universally true that what one man may do any number of men by concerted action may do. In *Pickett* v. *Walsh,* 192 Mass. 572, Loring, J., after alluding to the great increase of power by combination, says: "The result of this greater power of coercion on the part of a combination of individuals is that what is lawful for an individual is not the test of what is lawful for a combination of individuals; or to state it in another way, there are things which it is lawful for an individual to do which it is not lawful for a combination of individuals to do."

This organization of labor to better the condition of the laborer is natural and proper. There can be no doubt that it is the most effective way, perhaps the only effective way, in which as against the organization of capital the rights of the laborer can be adequately protected. In many ways the labor unions have succeeded in bettering the condition of the laborer; and so far as their ultimate intentions and the means used in accomplishing them are legal they are entitled to protection to the extreme limit of the law.

But their powers must not be so far extended as to encroach upon the rights of others. It is clear that if the power to intimidate by fine be regarded as one of the powers which labor unions may rightfully exercise, then the right to a free market for labor, — nay, even the right of the laborer to be free, — is seriously interfered with, to the injury both of the public and the employer as well as the laborer.

In *Martell* v. *White,* 185 Mass. 255, it was said: "The right of competition rests upon the doctrine that the interests of the great public are best subserved by permitting the general and natural laws of business to have their full and free operation, and that this end is best attained when the trader is allowed in his business to make free use of those laws." So of competition in labor: and so of competition between the employer and employee. The contest between them is only competition on a wide basis. As was said by Knowlton, C.J., in

Berry v. *Donovan,* 188 Mass. 353, 358: "In a broad sense, perhaps the contending forces may be called competitors." If the contest be carried on under the rules which regulate the law of supply and demand, leaving those engaged on either side to act under the general and natural laws of business, free from artificial coercion or intimidation as the words are ordinarily understood in this connection, then neither party has the right to complain; but if coercion or intimidation by threats of a direct personal loss, due not to causes arising out of the situation or logical to the situation, but to a cause having no natural relation to the situation and entirely inconsistent with the basic principle of freedom of action under the natural laws of business, then there is cause for complaint. Such a method of coercion must be declared illegal, as in violation of the right of the public and all concerned to a reasonably free labor market, that is, a market where all may act under this basic principle of freedom.

In view of these considerations and of others more fully set forth in *Martell* v. *White,* which are not here repeated, and in *Boutwell* v. *Marr, ubi supra,* a majority of the court are of opinion that the overwhelming sense of the thing is that the principle that the right of the employer is not subject to coercion or intimidation by injury or threats of injury to the persons or property of laborers standing in the market to meet him, should apply to the coercion and intimidation exerted by labor unions upon their members by fines or threats of fines. Any other conclusion is inconsistent with the existence of a reasonably free labor market to which both the employer and the employee are entitled.

Our attention has not been called to any case, nor are we aware of any, in which the precise point here involved has been discussed, which is inconsistent with the conclusion which we have reached. We are not aware of any case in which it has been adjudged that where a third party has a right to insist that those with whom he deals shall be free from coercion the rule does not apply to coercive acts by way of fines or threats of fines, imposed or to be imposed, by a voluntary association upon its members in accordance with its by-laws. The case of *Bowen* v. *Matheson* was explained in *Plant* v. *Woods,* 176 Mass. 492. Neither in that case nor in *Pickett* v. *Walsh* was there any evidence of coercion by fines. And the same may be said of *Mogul Steamship Co.* v. *McGregor,* 15 Q. B. D. 476; 21 Q. B. D. 544; 23 Q. B. D. 598; [1892] A. C. 25. In that case there was simply a withdrawal of trade advantages under certain conditions. The defendants had two prices, — one price for one class of customers, and a different one for another class. There was nothing in the nature of an arbitrary fine. As stated by Fry, L.J., in the case as reported in 23 Q. B. D. 598, 622, "Competition was in substance the only weapon which the defendants intended to use against their rivals in trade. No thought of using violence, molestation, intimidation, fraud, or misrepresentation was entertained by the defendants." See also in same case the language of Coleridge, C.J., 21 Q. B. D. 544, 552; and that of Halsbury, Lord Chancellor [1892], A. C. on p. 36, as follows: "After a most careful study of the evidence in this case, I have been unable to discover any thing done by the members of the associated body of traders other than an offer of reduced freights to persons who would deal exclusively with them;" and that of Lord Watson, on p. 43 of the same volume.

In the preparation of this opinion a large number of cases in addition to those hereinbefore named have been consulted, among which are the following: *Brown* v. *Stoerkel,* 74 Mich. 269; *Flaccus* v. *Smith,* 199 Penn. St. 128; *Fuerst* v. *Musical Mutual Protective Union,* 95 N. Y. Supp. 155; *Burns* v. *Bricklayers' Benevolent & Protective Union,* 14 N. Y.

Supp. 361; *Master Stevedores' Association* v. *Walsh,* 2 Daly, C. P. 1; *Froelich* v. *Musicians Mutual Benefit Association,* 93 Mo. App. 383; *Doremus* v. *Hennessy,* 176 Ill. 608; *Bohn Manuf. Co.* v. *Hollis,* 54 Minn. 223; *Temperton* v. *Russell* [1893], 1 Q. B. 715; *Wabash Railroad* v. *Hannahan,* 121 Fed. Rep. 563; *Mayer* v. *Journeymen Stonecutters' Association,* 2 Dick. 519; *Thomas* v. *Cincinnati, New Orleans & Texas Pacific Railway,* 62 Fed. Rep. 803; *Barr* v. *Essex Trades Council,* 8 Dick. 101. See also for others, those cited in *Martell* v. *White,* 185 Mass. 255, and in *Pickett* v. *Walsh.* 192 Mass. 572.

The result is that in the opinion of a majority of the court there should be a decree restraining and enjoining the defendants, their agents and servants, from intimidating by the imposition of a fine, or by a threat of such fine, any person or persons from entering into the employ of the plaintiff or remaining therein; or from in any way being a party or privy to the imposition of any fine or threat of such imposition upon any person desiring to enter into or remain in the employ of the plaintiff; and it is *So ordered.*

Sheldon, J., and Knowlton, C.J., dissenting.

The following cases deal with questions arising from the "black-listing" of certain alleged delinquent debtors by associations of tradesmen, and while not sufficiently closely connected with labor disputes to justify their printing in full should be noticed by any one wishing to investigate the topic fully.

Hartnett v. *Plumbers' Supply Association,* 169 Mass. 229.

Weston v. *Barnicoat,* 175 Mass. 457.

The following cases represent another class of Massachusetts decisions of some importance in these cases.

Morasse v. *Brochu,* 151 Mass. 567.

Tasher v. *Stanley,* 153 Mass. 148.

Garst v. *Charles,* 187 Mass. 144.

For a case bearing on the constitutional guarantees of the right "to acquire, possess and protect property," see

Commonwealth v. *Perry,* 155 Mass. 117.

III.

TYPICAL CASES AND FORMS OF INJUNCTIONS.

Cases growing out of strikes and other labor disputes tend to fall into more or less clearly defined classes, and the papers filed and proceedings had within each of these classes to take almost identical form. In order that the general nature of the bills in equity filed and the injunctions issued in these cases may be seen there follow the records of several typical recent cases. Minor motions and papers of purely technical importance are omitted.[1]

The first (*Walker* v. *Clark*) is an example of a very numerous class of cases in which no question is made of the lawfulness of the strike itself, but complaint is made of the methods of the strikers and an injunction is asked against picketing, patrolling, violent threats and actions, and other forms of intimidation of present and prospective employees. After a preliminary hearing a temporary injunction was ordered, which is also printed and is a fair sample of this class of decrees. No further proceedings were taken in this case, as not infrequently happens.

In the second case (*Walton & Logan Co.* v. *Knights of Labor*) the bill, which is not materially different from that in *Walker* v. *Clark,* is omitted. This case, with two others which grew out of the same situation, was referred upon the question of issue of a temporary injunction to a master whose report is printed. (Page 102.) Upon the filing of this report the court ordered a temporary injunction, which is also printed. (Page 109.) Thereafter the defendants filed an answer denying generally the allegations of the bill, but no further proceedings were taken.

The third case (*Boston Herald Co.* v. *Driscoll*) is an example of a case where the strike threatened was alleged to be illegal because a "sympathetic strike" against persons with whom the strikers had no direct grievance. In this case an *ad interim* injunction was issued. Upon the return day of the order of notice a *stipulation* was filed by the defendants that they would not do the acts complained of, and this disposed of the case.

The fourth case (*The Woodbury & Leighton Co.* v. *McGivern*) is another case of sympathetic strike which was brought in the Supreme Judicial Court. After hearing, a temporary injunction was ordered against one of the individual defendants. Thereafter the defendants filed their answer and a hearing was had of the matter before Mr. Justice Loring, who made certain "Findings and Order for Decree" which are printed in full. (Page 120.) In pursuance of this order a "Final Decree" was issued, permanently enjoining the defendants from certain acts specified which is also printed in full. (Page 125.)

In the fifth case (*J. Stevens Arms & Tool Co.* v. *Gilmartin*) only the decree of injunction is printed. (Page 127.) The case does not differ materially from *Walker* v. *Clark,* but the decree covers also certain acts designed to deprive the complainant of customers.

1. Walker *v.* Clark.

Commonwealth of Massachusetts.

Essex, ss. In Equity. Superior Court.

Johnson L. Walker and Herbert F. Walker, doing business under the firm name of J. L. Walker & Co., *Complainants, v.* Alexander S. Clark, Norman L. Kelley, Daniel J. Downing, Fred J. Mitchell, Edward McCready, John Hildreth, E. F. Smith, Michael Nohelty, Edgar B. Gedney, William Sawyer, F. X. Lafoie, Edward P. Albee, William J. Kelley, and Edward Ferguson, *Respondents.*

Substituted Bill of Complaint.

To the Honorable the Justices of the Superior Court in Equity within and for the county of Essex:

[1] Quotations from the bills and injunctions in *Vegelahn* v. *Guntner, Pickett* v. *Walsh,* and *Plant* v. *Woods,* may be found in the reports of those cases which are printed *ante.*

Respectfully represent: Your complainants:

1. That your complainant Herbert F. Walker is of Lynn in the county of Essex. That your complainant Johnson L. Walker is of Boston in the county of Suffolk. That they are co-partners doing business under the firm name and style of J. L. Walker & Co., having their usual place of business in Lynn in the county of Essex. That they are engaged in the business of manufacturing boots and shoes and that they employ large numbers of persons in their business.

2. That your complainants are informed and believe and thereupon allege that the respondent Norman L. Kelley is a member of and president of a certain voluntary, unincorporated association or trade union known as Edgemakers Union No. 1.

That the respondent Daniel J. Downing is secretary of said Edgemakers Union No. 1.

That the respondent Fred J. Mitchell is treasurer of said Edgemakers Union No. 1.

That the respondent Alexander S. Clark is business agent of said Edgemakers Union No. 1.

That the respondents McCready, John Hildreth, E. F. Smith, Michael Nohelty, Edgar B. Gedney, William Sawyer, F. X. Lafoie, Edward P. Albee, William J. Kelley, Edward Ferguson are members of said Edgemakers Union No. 1 and that all of said respondents are of Lynn in the county of Essex.

3. That the remaining members of said union are too numerous to be set forth individually in this bill and that moreover the names of the remaining members are to your complainants unknown. That those herein named fairly represent the interests of said remaining unknown members. Wherefore, your complainants set forth and join the above named respondents both individually and as representing all the members of the aforesaid union herein referred to, thereby joining as respondents said remaining unknown members of said Edgemakers Union No. 1.

4. That there is now a strike in progress among certain of the complainants' employees, and your complainants are informed and believe and thereupon allege that said employees are members of the respondent union and that said employees have joined said strike in consequence of the orders of the respondents; that such of said employees of the complainants as are members of said union have ceased to work for the complainants for the purpose of engaging in said strike; and that said strike has been ordered as aforesaid by the respondents.

5. That the complainants now employ certain persons in the said businesses who do not belong to said respondent unions.

6. That the respondents have unlawfully and maliciously conspired together to injure and ruin the complainants in their businesses.

7. That in pursuance of said conspiracy the respondents have been and are engaged in unlawfully causing and persuading and endeavoring to persuade the complainants' workmen to leave their several employments, and that the said respondents do congregate in squads and cause others to so congregate at points near the complainants' places of business, and at places where the complainants' workmen are accustomed to go to and from their work, and by language, threats, conduct, violence, and other unlawful means, annoy, intimidate, and interfere with the complainants' said workmen for the purpose of unlawfully inducing and compelling said workmen to leave their employment; that said respondents are and were a menace to the complainants' workmen and that they have intimidated large numbers of the complainants' workmen and have compelled and induced them to leave the complainants' employ; that they are at the present time endeavoring

to compel others now in the employment of the complainants to leave the same.

8. That in pursuance of said conspiracy the respondents act and cause others to act as pickets and patrol the streets near the complainants' premises for the purpose of maliciously persuading workmen employed by the complainants or desirous of entering the complainants' service from remaining in or entering said service.

9. That in pursuance of said conspiracy and for the purpose of intimidating persons in the employ of the complainants, and to compel such persons to leave such employment, the respondents act and cause others to act as pickets and patrol the streets upon which said persons go to and from their work to follow such persons about the streets of the city of Lynn in an intimidating and threatening manner, and annoy, hinder, and assault such persons and cause other persons to follow, annoy, hinder, and assault such persons so employed by the complainants as aforesaid.

10. That your complainants are informed and believe and thereupon allege that in pursuance of said conspiracy, and for the purpose of injuring the business of the complainants by rendering it impossible for the complainants to secure employees and to make contracts in the pursuit of their business, the respondents have caused the complainants to be reported as "unfair" and to be placed upon an "unfair list," so called.

11. That your complainant will suffer irreparable injury if the respondents continue to act in pursuance of said conspiracy, and that your complainant is without any adequate remedy at law in the premises.

Wherefore, your complainants pray:

First. That an injunction may issue restraining the respondents and each and every of them from interfering with the complainants' business by intimidating, threatening, annoying or hindering any person now or hereafter in the employment of the complainants or desirous of entering the same from remaining therein or from entering the same.

Second. That an injunction may issue restraining the respondents and each and every of them from congregating in squads in the vicinity of the complainants' premises and from establishing patrols and pickets in the vicinity of the complainants' premises, and from causing others to so congregate to picket or patrol in the vicinity of said premises.

Third. That an injunction may issue restraining the respondents and each and every of them from obstructing, annoying, interfering with, or intimidating any person or persons who now are or may hereafter be in the employment of the complainants or desirous of entering the same in entering or leaving the complainants' premises or in proceeding to and from their places of abode and said premises or in remaining peacefully in their places of abode or in pursuing their respective ways about the streets after working hours.

Fourth. That an injunction may issue restraining the respondents and each and every of them from maliciously inducing or enticing any person now or hereafter in the employment of the complainants to leave the same.

Fifth. That an injunction may issue restraining the respondents and each and every of them from reporting the complainants as "unfair" or placing or keeping the names of the complainants upon any "unfair list," so called.

Sixth. That an injunction may issue restraining the respondents and each and every of them from interfering with the complainants' business by any scheme or design among themselves or with others organized for the purpose of interfering with or injuring the complainants' business by intimidating, an-

noying, or obstructing persons now or hereafter in their employment or desirous of entering the same, or by any other means.

Seventh. And for such other and further relief as to this honorable court may in the premises seem meet and proper.

Filed May 15, 1907.

Interlocutory Decree. — Temporary Injunction.

The above entitled cause came on to be heard upon the complainants' motion for a temporary injunction, and after hearing thereon in consideration thereof it is ordered, adjudged, and decreed that an injunction issue *pendente lite* to remain in force until the further order of this Court or some justice thereof; restraining the respondents individually named in said bill, and the members of Edgemakers' Independent Union No. 1 of Lynn and each and every of them, their agents and attorneys, from interfering with the complainants' business by obstructing, threatening, intimidating, or interfering with any person or persons who now are or may hereafter be in the employment of the complainant or desirous of entering the same, or by inducing or attempting to induce any person now or hereafter in the employment of the complainant to break any contract of employment with the complainant, and from interfering with the complainants' business by picketing or patrolling or causing others to picket or patrol the streets in the vicinity of the complainants' place of business, or by following persons now or hereafter in the employment of the complainant to or from their work, or their places of abode, for the purpose of inducing such persons to leave the employment of the complainants.

Filed May 23, 1907.

2. Walton & Logan Co. *v.* Knights of Labor.

Commonwealth of Massachusetts.

Essex, ss. In Equity. Superior Court.

Walton & Logan Company, a corporation duly organized by law and having its usual place of business in Lynn in said county, *Plaintiff*, *v.* The Knights of Labor No. 3662, a voluntary association having a usual place of business in said Lynn, and I. Boynton Armstrong, John J. Couhig, Adelbert C. Colby, Sidney Smith, Edwin Snow, Frank Q. Woods, Stephen Enghaben, Allen Lister, Donald Gow, H. S. Hatch, Arthur Foss, A. W. Harris, and E. Atkins, officers and agents of said Knights of Labor No. 3662, Mary Hickey, Alice Blizzard, Clara Burgess, Florence Crosby, Alice Kenney, Mary E. Pard, Catherine McLellan, Annie Bowen, Mary Peabody, and Samuel Hamilfarb, all of said Lynn, *Defendants.*

Bill of Complaint.

(Substantially like that in *Walker* v. *Clark, ante.*)

Filed January 20, 1903.

Interlocutory Decree.

This case came on to be heard upon an application of the plaintiff for a preliminary injunction to restrain the defendants as prayed for in the plaintiff's bill, and it appearing that Henry Wardwell, Esq., is unable to serve, it is therefore ordered and decreed that the matter be referred to F. Rockwood Hall, Esq., of Boston, Mass., as master, to find and report the facts to the court forthwith; the hearing to commence at once and so far as practicable to proceed from day to day until concluded.

Master's Report.

Pursuant to the rules referring the above causes to me as master to find and report the facts, the parties appeared before me with their witnesses on a number of different days. I heard their evidence (which was quite voluminous) and the arguments of counsel, and find and report as follows:

The three causes above named[1] were

[1] The cases of Harney Brothers and of D. A. Donovan & Co. against the same defendants were heard with this case.

by agreement of counsel, and for convenience heard together, the defendants in all three suits being the same, and the allegations in the three bills, and the relief prayed for therein, being substantially alike.

The plaintiffs above named are corporations or firms engaged in the business of manufacturing boots and shoes in the city of Lynn.

The defendant "Knights of Labor No. 3662" (more properly styled "Cutters Assembly No. 3662, Knights of Labor") is a voluntary local association, unincorporated, of about 1,000 Lynn shoe cutters, with a constitution and by-laws, operating under a charter from the general order of the Knights of Labor. About 100 of its members were in the employ of the several plaintiffs. Its officers consist of a president, vice-president, treasurer, secretary, agent, and an executive board of seven members, including the president and vice-president. It has a hall on Andrew Street in Lynn, resorted to by its members, and where its meetings are held. The defendant I. Boynton Armstrong is its president; the defendant Frank Q. Woods is its treasurer; the defendant Sidney Smith is its secretary; the defendant Edwin Snow is its agent; and the above named I. Boynton Armstrong, together with the defendants Adelbert C. Colby, John J. Couhig, Stephen Enghaben, Arthur Foss, A. W. Harris, and a Mr. Parker, not named as an individual defendant in any of the actions, constitute its executive board.

There was no evidence offered tending to show who the rest of the defendants above named were, nor what, if any, connection they had with any of the matters mentioned or referred to in any of said bills of complaint. Therefore, wherever the term "defendants" is hereinafter used it refers merely to the defendant assembly and its officers above designated.

These bills of complaint are all of similar tenor, and allege in substance that the plaintiffs are, and have been for a long time, engaged in the manufacture of boots and shoes in Lynn, employing a large number of hands, among them a number of shoe cutters who are members of the Knights of Labor No. 3662; that on or about January 16, 1903, said cutters at the instigation of the defendants went out on a strike, and that the defendants attempted to induce a number of other employees of the plaintiffs to strike by the use of threatening language, by the throwing of missiles, and by the collection of large crowds about the plaintiffs' premises, said crowds being composed of members of said Cutters Assembly, and their sympathizers: that since said January 16 the plaintiffs have endeavored to supply the places of the striking cutters and have to a certain extent succeeded in so doing, but that the defendants, their servants and agents, wilfully and maliciously patrol and obstruct the streets about the plaintiffs' premises and by the use of pickets wilfully and maliciously endeavor to cause the new cutters to leave the plaintiffs' employment, and that they have wilfully and maliciously interfered with and tried to intimidate said new cutters and thereby force them to leave the plaintiffs' employment, and have threatened said new cutters with bodily harm if they continued in said employment and that they still continue to employ said methods for the purpose aforesaid; and that they actually seized one of said new cutters and carried him against his will to their hall, and there by force and threats induced him to leave the employment of one of the plaintiffs; that by reason of said patrol and pickets, and by their wrongful and wilful acts above set forth, the defendants, their servants, and agents, have been and are a nuisance and obstruction to persons traveling in the streets, and to persons in the employ of the plaintiffs, and to persons intending to trade with the plaintiffs at their premises, and to persons intending to enter the employ-

ment of the plaintiffs; that all the acts of the defendants above set forth are a part of a scheme to wrongfully and maliciously compel and induce persons in the employment of the plaintiffs to withdraw therefrom or to abstain from entering said employment; that the plaintiffs' business has been greatly damaged thereby, and that if the defendants are permitted to continue their said wrongful acts the plaintiffs' business will be further seriously injured and destroyed.

The applications in these several cases being for preliminary injunctions no answers have been filed in any of them.

It appears that there is and has been in this country for several years an organization of boot and shoe workers, entirely apart and distinct from the Knights of Labor, known as the Boot and Shoe Workers Union, with branches in the principal centers of the boot and shoe industry, having a large membership among the operatives in the various departments of this manufacture. The members of the Cutters Assembly above referred to do not belong to this union, although employed in the various shops in company with members of the latter organization.

Some time prior to January 16, 1903, the plaintiff firms or corporations, above named, had severally entered into written contracts (which are still in force) with said Boot and Shoe Workers Union whereby, among other things, it was agreed that the union should furnish to the employers, free of charge, what is known as the union stamp, to be affixed to goods manufactured in the employers' shops, and to make all reasonable effort to advertise the union stamp and to create a demand for the union-stamped products of the employers; that the employers should hire as shoe workers only members of the Boot and Shoe Workers Union, in good standing, and further that they would not retain any shoe worker in their employment after receiving notice from the union that such shoe worker was objectionable to the union; that the union would not cause or sanction any strike, and that the employers would not lock out their employees while said agreements were in force; that the union would assist the employers in procuring competent shoe workers to fill the places of any employees who should strike while the agreements were in force or who should withdraw or be expelled from the union; and that all questions of wages or conditions of labor, which could not be mutually agreed upon, should be submitted to the Massachusetts State Board of Arbitration, the decision of which should be final and binding upon the employers, the union, and the employees.

The plaintiffs considered these contracts valuable to them and were induced to enter into them for the reason that thereunder they could carry on their business without fear of strikes or similar labor troubles and because the use of the union stamp tended to largely increase their business, their orders for goods from customers all over the country for the most part requiring that such goods should bear the union stamp. Another valuable feature of their contracts in the eyes of the plaintiffs was the clause regarding arbitration contained therein.

The factories operated in Lynn under the provisions of said contracts are known as "stamp shops."

A few days prior to January 16, 1903, the defendants Armstrong and Snow, either together or singly, and as representing the Cutters Assembly No. 3662, Knights of Labor, communicated with the several plaintiffs and demanded in substance that they should agree not to employ thereafter as cutters other than members of said Cutters Assembly No. 3662, Knights of Labor, or at any rate that they would not ask such of their cutters as belonged to said assembly to join the Boot and Shoe Workers'

Union, stating that the penalty for refusing to accede to this demand would be that their Knight of Labor cutters would strike forthwith. On account of the contracts then existing between themselves and the Boot and Shoe Workers Union, above noted, and for other reasons, the plaintiffs refused to accede to said demands. Thereupon on the morning of Friday, January 16, under orders of the executive board of the assembly, issued by the defendants Armstrong and Snow, all the cutters in the employ of the several plaintiffs struck and left the shops.

As a matter of fact, up to this time, notwithstanding said contracts, no demand had ever been made upon the plaintiffs, or any of them, by the Boot and Shoe Workers Union, or any one else, to discharge any of their Knight of Labor cutters, and so far as appears the Boot and Shoe Workers Union had no desire or intention so to do. Such was certainly not the intention or desire of any of the plaintiffs. On the contrary they wished them to remain, as many of their cutters had been in their employ for a long time, were skilled men, and their relations were entirely amicable. So far as appears the striking cutters were entirely satisfied with their wages and hours and the conditions of their employment, and struck solely in obedience to the orders of the executive board of their assembly above referred to.

I find that the purpose of the defendants in ordering this strike was to cripple the plaintiffs and so injure their business as to force them to accede to the demands of the Cutters Assembly above referred to.

On the day on which the striking cutters left the plaintiffs' factories, to wit, January 16, 1903, at the instigation of the defendants Armstrong and Snow, said cutters distributed among the female operatives in said factories, known as the lady stitchers, and who were not members of nor allied with any labor organization, the following printed circular, which was prepared and signed in the name of the executive board of Cutters Assembly No. 3662, Knights of Labor, by the defendants Armstrong and Snow, as chairman and agent thereof respectively.

NOTICE.

To the Lady Stitchers employed in Stamp Shops, Greeting:

You are hereby notified that the cutters employed in all stamp shops in Lynn have been ordered out on strike against the Boot and Shoe Workers Union. If you desire to join hands with us in this fight for freedom from the tyranny of the Boot and Shoe Workers Union, and secure your own freedom too, now is your opportunity, and if you so decide the cutters of Lynn pledge themselves to stand with you to the end, which we feel assured will result in victory for yourselves and us. If this request meets with your approval you are requested to cease work at once and join with the cutters in securing independence and release from the payment of oppressive dues.

Fraternally yours,
EXECUTIVE BOARD,
CUTTERS ASSEMBLY, NO. 3662, K. OF L.
I. B. ARMSTRONG, *Chairman.*
EDWIN SNOW, *Agent.*

On the same day a mass meeting of said stitchers was held in Lynn and an address was made to them by the defendant Armstrong, wherein he urged them to join the Knights of Labor cutters and drive the cutters of the Boot and Shoe Workers Union and its stamp out of the city.

As a result of this circular and appeal a large number of the lady stitchers left the plaintiffs' shops on that day or the day following.

I find that the purpose of the defendants in thus inducing the stitchers to leave the plaintiffs' employ was to still further cripple the plaintiffs and thereby force them to accede to the defendants' demands above referred to.

The officers of the Boot and Shoe Workers Union at once undertook to fill the places of the striking cutters in the plaintiffs' shops, and to that end began to bring to Lynn, at the expense of the

union, cutters from different parts of the country, even as far west as Chicago. Some were brought direct to Lynn. Others were brought to Boston and were quartered at the United States Hotel, whence they were transferred to Lynn and distributed among the various shops. This undertaking was bitterly opposed by the striking cutters and their sympathizers.

Beginning on the morning of the day following the strike, to wit, on Saturday, January 17, and thereafter, until the latter part of the following week, the striking cutters patrolled the streets in front of and adjacent to the plaintiffs' factories, for the most part continuously during working hours, in numbers, however, not exceeding 12 at any one factory. They spoke to people going to and from the plaintiffs' factories, but whether the persons so accosted were employees or not, or whether they were new cutters or not, and what was said does not appear.

Also during substantially the same period small bodies of striking cutters were from time to time at the several railroad stations in Lynn, particularly upon the arrival of trains from Boston.

I find that they patrolled the streets and railroad stations as aforesaid for the purpose of meeting the new cutters as they arrived, of intercepting them, and, if possible, of inducing them to turn back, and of ascertaining their numbers and at what shops they got employment. This information was sought for the purpose of aiding their assembly, and the executive board thereof, in carrying on the strike, and was duly reported to the assembly or its officers.

On Monday, January 19, the new cutters brought to Lynn by the Boot and Shoe Workers Union to take the places of the strikers began to arrive. This marks the beginning of a series of disturbances in the streets of Lynn, more or less violent, which occurred daily up to the time the several bills were filed and orders of notice were served on the several defendants, and which have continued with more or less frequency ever since.

On the afternoon of Monday, January 19, the new cutters, who had that day gone into the factory of the Walton & Logan Co. to take in part the places of the strikers, finished their day's work at about 4 P.M. As a matter of precaution and protection they were driven in a covered wagon from the factory to what is known as Lasters Hall on Andrew Street, Lynn, which is the headquarters of the Boot and Shoe Workers Union. By this hour a crowd, estimated to contain from 3,000 to 5,000 people, had gathered about the factory to await the outcoming of the new cutters. In this crowd were recognized from 15 to 20 of the Walton & Logan Co.'s former cutters. The crowd was hooting and yelling, shouting "scab," "kill him," "drive them out of town," and making other outcries of a similar nature in a rough, boisterous, and threatening manner well calculated to terrify and intimidate the new cutters. They threatened the driver of the team with personal violence if he persisted in carrying the men. In spite of the threats, however, the wagon with its occupants was driven to Lasters Hall (the headquarters of the Boot and Shoe Workers Union), the crowd following, halloing and shouting as before and hurling at the team ice, mud, and other missiles. So far as appears no one during this trip suffered personal injury at the hands of this crowd. The team distanced the crowd, and when it arrived at the door of the hall the crowd had fallen off to some 300 or 400. The outcries continued, however, directed to the men who were getting out of the wagon. All of these succeeded in getting into the hall but the last. He was pushed down in the crowd and was struck at and kicked at (but by what individuals does not appear), and not until he had said "I will go with you,

boys, if you want me to," did this treatment cease. He was thereupon assisted to his feet and was escorted to the Knights of Labor headquarters, without further molestation, one man on each side having hold of his arms. He there met the defendants Armstrong and Snow, who undertook to tell him their side of the controversy. After being detained there for some 15 or 20 minutes, during which he was questioned as to his intention to remain in Lynn and in the shop where he was employed, and the said defendants Armstrong and Snow had expressed their sympathy for him in the affair and had protested that none of their men were concerned in the assault, he was provided with an escort to his lodging-room of two of the Knights of Labor (not by his wish, however), and while under this escort he was free from all other interference or molestation. The above attempt of the defendants to induce this man to leave his employment was unsuccessful.

On the following day, to wit, Tuesday, January 20, the several amended bills of complaint were filed, and orders of notice were served on the several defendants.

Beginning with that day, and during the three or four days following, the new cutters were accompanied to and from their work morning and evening by a detail of police and members of the Boot and Shoe Workers Union, as an escort, and as a protection against violence, the men having their dinners supplied at the various factories and not going out at noon. On each occasion they were accompanied by crowds varying in size from several hundreds to several thousands, among which were usually seen from two or three to 10 or 12 striking cutters, the crowds consisting of men, women, and boys, the latter being estimated as composing about one-third of the number. The crowds were threatening in their bearing and language, which was foul and abusive towards the new cutters, mixed with hisses, hoots, yells, shouts of "scab," "kill them," "drive them out of town," and the like, which proceeded largely from the boys in the crowds. There was more or less snow-balling and throwing of mud and other missiles. Outside of the few striking cutters and the members of the Boot and Shoe Workers Union seen in the crowds, it did not appear to what, if any, labor organization the rest of the men therein belonged. Neither did it appear what caused these crowds to collect other than the knowledge which was common among the working people in Lynn (of which there are many) that new cutters were being imported to take the places of the strikers and sympathy with the strikers and their cause, coupled with the fact that under the circumstances the gathering of striking cutters in front of the various factories, and the likelihood of trouble, would naturally have a tendency to attract curious, idle, and disorderly persons.

On these various occasions several assaults, more or less severe, were made by certain men in the crowds upon the police and the escorting Boot and Shoe Workers, and several arrests followed. Towards the end of that week the crowds diminished in numbers and violence and the escort was discontinued. Thereafter the disturbances consisted for the most part of occasional encounters upon the streets between individual new cutters, or members of the Boot and Shoe Workers Union, and persons who were claimed to be either members of the Knights of Labor or their sympathizers, mutual assaults were committed, and arrests were made on both sides, but it does not appear which party was the aggressor, each claiming to have been the one assaulted. These occurrences took place during the progress of the hearings before me.

At intervals during this time one or more of the striking cutters frequented the United States Hotel in Boston, which was the rendezvous of the incoming cutters, and by personal solicitation, by

offering money, and by showing them a copy of a Lynn newspaper containing a startling account of the disturbances in Lynn and the assaults committed there upon the new cutters tried to induce them to turn back.

Upon the arrival of the new cutters in Lynn they were escorted through the streets by members of the Boot and Shoe Workers Union to the headquarters of the latter at Lasters' Hall, accompanied by crowds similar in character and conduct to those above described. On at least one occasion, other than the one hereinbefore referred to, one of the new cutters was induced by the crowd, through fear of personal violence, but without actual molestation, to accompany them to the Knights of Labor headquarters, where the defendants, or some of them, tried to persuade him to quit his employment and leave town.

I find that as a result of the strike and of the disturbances which accompanied and followed it, above set forth, the plaintiffs have suffered great loss and their business has been seriously injured, which loss and injury is likely to continue until these troubles end.

The defendants disclaimed all responsibility for any of the occurrences above set forth subsequent to the calling out of their cutters and the joining of the lady stitchers in the strike, contending that in whatever was done thereafter the persons engaged therein acted solely of their own volition and not in obedience to any orders or instructions issued by them or any of them. They contended furthermore that they discountenanced all acts of violence and counselled their followers to abstain therefrom and to employ only lawful means to induce the new cutters to keep out of or to leave the city.

As to the patrolling and picketing above set forth I find that the striking cutters engaged therein acted of their own volition and not in obedience to orders or instructions issued by the defendants or any of them, but that this system was one of the principal sources from which the defendants derived information as to the number of new cutters arriving and their destination, and that it was carried on with the tacit approval of the defendants and without protest of any kind on their part.

As to the gathering of crowds, the interference with and assaults upon the police and the new cutters, and the various other acts of violence and disorder enumerated above, I find that they were the outgrowth of the existing state of things and such as might not be unreasonably expected under the circumstances. I do not find that either of the individual defendants personally took part in them or that they were authorized or sanctioned by the individual defendants, or any of them. On the contrary, I find that the defendants repeatedly discountenanced all manner of violence, threats of personal injury, or discourteous language towards the new cutters or members of the Boot and Shoe Workers' Union. But so far as the evidence before me showed these things were done without other protest of any kind on the part of the defendants, or any of them, and without steps being taken, or any effective attempt being made by them, or any of them, to prevent them.

I find also that it was the wish of the individual defendants to induce the new cutters to keep away from Lynn, and for such as had obtained employment there to leave it, and that this wish was shared in by the members of their assembly, and that the aforesaid patrolling, picketing, gathering of crowds, interference, assaults, and other acts of violence and disorder, except so far as the same may have been done by persons other than members of said assembly, or those in sympathy with them, were instituted and carried on by those engaged in them with the intent and for the purpose (which was to some extent successful)

of intimidating the new cutters and inducing them to turn back, to keep away, or to leave town, and thereby so cripple the plaintiffs and so injure their business as to force them to comply with the demands of the assembly above set forth, and that this purpose was shared in by the defendants.

I find that in the performance of the various acts above set forth those engaged in them became a nuisance and a hindrance to persons traveling in the public streets, and to persons in the employ of the plaintiffs, and to persons visiting the plaintiffs' premises for purposes of trade or employment.

I find further that the defendant assembly, and the individual defendants, being officers thereof, and their servants and agents, and the individual members of said assembly, are so affiliated and connected by association, organization, and votes, that the acts of one are the acts of all and that they were all united in one common purpose.

I find upon the whole evidence that these defendants, in the performance of the various acts above set forth, except so far as the same were committed by persons other than members of said assembly, or those in sympathy with them, were actually or constructively engaged in an attempt to compel the plaintiffs to accede to the demands of said assembly, and execute the agreements above set forth, and, failing in that, to injure or destroy the plaintiffs' business.

I am not required by the rules referring these cases to me to make any rulings upon the questions of law involved therein.

Filed February 25, 1903.

Interlocutory Decree. — Temporary Injunction.

This cause came on to be heard at this sitting upon the report of the special master to whom the cause was referred on the question of the issue of a temporary injunction, and after due hearing, at which the several defendants were represented by counsel, it is ordered, adjudged and decreed that said report be confirmed and that an injunction issue to remain in force until the further order of this Court or of some Justice thereof, restraining the respondents and each and every of them, their agents and servants, and each member of said defendants (Knights of Labor No. 3662, otherwise known as Cutters Assembly No. 3662 Knights of Labor) from interfering with the plaintiffs' business by patrolling the sidewalks or streets in front of or in the vicinity of the premises occupied by them for the purpose of preventing any person or persons, who now are or may hereafter be in their employment or desirous of entering the same, from entering it or continuing in it, or by obstructing or interfering with such persons or any others in entering or leaving the plaintiffs' said premises, or by intimidating by threats or otherwise any person or persons, who now are or may hereafter be in the employment of the plaintiffs or desirous of entering the same, from entering it or continuing in it; or by any scheme or conspiracy among themselves or with others organized for the purpose of annoying, hindering, interfering with, or preventing any person or persons, who now are or may hereafter be in the employment of the plaintiffs or desirous of entering the same, from entering it or from continuing therein.

By the Court sitting in Boston.

Henry E. Bellew, *Assistant Clerk.*

February 26, 1903.

Filed February 27, 1903.

3. Boston Herald Co. *v.* Driscoll.

Commonwealth of Massachusetts.

Suffolk, ss. In Equity. Superior Court.

The Boston Herald Company, a corporation duly organized under the laws of Massachusetts, having its usual place of business at Boston in said County of Suffolk, *Plaintiff, v.* Dennis Driscoll, individually and as he is State agent, so called, an officer and member of the American Federation

of Labor; John T. Cashman individually and as business agent, so called, an officer and member of the Building Trades Council; Colin W. Cameron individually and as agent, officer, and member of the Brotherhood and Amalgamated Society of Carpenters; Thomas Platt individually and as business agent, officer, and member of a certain Plumbers Union of said Boston, known as Local No. 12; J. W. Barton individually and as business agent, an officer and member of a certain Electrical Workers' Union known as Union No. 103 of the International Brotherhood of Electrical Workers; —— Noble individually and as business agent, an officer and member of a certain Painters' and Decorators' Union, known as Union No. 11 of the Brotherhood of Painters, Decorators, and Paper Hangers of America; George M. Gunter, individually and as international organizer, an officer and member of the Amalgamated Woodworkers' International Union of America; All of said Boston; said Brotherhood and Amalgamated Society of Carpenters, said Plumbers Union, said Electrical Workers Union, said Painters and Decorators Union, and the members thereof and each of them, the said brotherhood and the said unions being voluntary associations commonly known as trades unions, consisting respectively of various individuals also of said Boston; the said American Federation of Labor, a voluntary association composed of various trades unions all over the United States, including the trades unions above named, and other trades unions of said Boston; the said Building Trades Council, a voluntary association composed of various trades unions, so called, of said Boston; and the officers, agents, and members of the said American Federation of Labor and the said Building Trades Council; the Erickson Electric Equipment Company, a corporation duly organized under the laws of Massachusetts and having a usual place of business in said Boston; the Salem Elevator Works, a corporation duly organized according to law and having a usual place of business in Salem in the county of Essex and said Commonwealth; Daniel Bresnahan and Herbert Bresnahan, doing business as copartners in said Boston under the name of Bresnahan Brothers; William A. and N. W. Tucker, doing business as a copartnership in said Boston under the name of James Tucker & Sons Company; the Fosburg Construction Company, a corporation duly organized under the laws of Massachusetts and having a usual place of business in said Boston; the Derby Desk Company, a corporation organized according to law and having a usual place of business in said Boston, *Defendants.*

Bill of Complaint.

The plaintiff complains and says:

1. That the plaintiff is a corporation engaged in the business of publishing a daily and Sunday newspaper known as the Boston Herald; that the said business heretofore for a long time has been conducted by the plaintiff in a certain building at 255 Washington Street in said Boston; that recently the plaintiff has entered into plans and arrangements for transferring its offices and business and mechanical plant to new quarters on Tremont, Mason, and Avery Streets in said Boston; that for this purpose the plaintiff obtained at large cost and expense a lease of certain land and buildings on said Tremont, Mason, and Avery Streets and contracted to pay a large rental therefor for many years; and in pursuance of the arrangement and contract between the plaintiff and the lessors the construction of an entirely new building was undertaken on said Mason and Avery Streets for the plaintiff's mechanical plant, and the remodeling of three floors of a building on said Tremont Street for the plaintiff's business offices.

2. That the plaintiff entered into a contract with the defendant Fosburg Construction Company for the construction of the said mechanical building and the remodeling of the said office building, and work was begun by the said Fosburg Company on the said mechanical building on or about the month of November, 1905, and on the said office building on or about February 1, 1906, and has since been diligently carried on in accordance with the said contract.

3. That the said Fosburg Construction Company entered into various contracts with various sub-contractors for portions of the said work of construction and remodeling, including the defendants

Bresnahan Brothers and James Tucker & Sons Company, and also employed directly numerous carpenters and laborers on the said work.

4. That the plaintiff also entered into various other contracts with various firms and corporations for the furnishing and installation of various appliances and apparatus in the said buildings, including the defendants the Erickson Electric Equipment Company and the Salem Elevator Works.

5. That all the contractors and subcontractors above named and their workmen and employees have been and are now at work on the said buildings, and the work thereon is very nearly completed so that if the said work is continued without interruption the said buildings will be suitable for occupancy and in such condition that the business of the plaintiff can be carried on therein, and its newspapers prepared, printed, and published therein beginning with the issue of Monday morning April 30, 1906.

6. That in the expectation that the said work would be so continued without interruption and so completed the plaintiff made all its plans and arrangements to transfer its plant and business from its offices on Washington Street to the said new quarters prior to said Monday morning, April 30th; that in pursuance of these plans and arrangements a large part of the equipment and material of the plaintiff for the conduct of its business, including desks, papers, records, machines, orders for advertisements, copy for advertisements, copy for other portions of the paper, and many other things have been removed from the said Washington Street offices to the said new buildings.

7. That in connection with the equipment of the said new buildings the plaintiff ordered and contracted for a large number of desks for editors, reporters, stenographers, and other employees, from the Derby Desk Company, a corporation duly organized according to law and having a usual place of business in said Boston; that the said desks were to be constructed to order and installed by the said Derby Desk Company in the said new buildings, and the said contract involved the payment of a large sum of money; that the said desks had been so constructed by the said Derby Desk Company and had been partially installed in the said new buildings at five o'clock on the afternoon of this twenty-eighth day of April, 1906.

That the said Building Trades Council, the said American Federation of Labor, the said Brotherhood and Amalgamated Society of Carpenters, the said Plumbers Union, the said Electrical Workers Union, and the said Painters and Decorators Union are associations of individuals known as trades unions or associations of trades unions; that the plaintiff is informed and believes and therefore avers that the four last named are members of the said Building Trades Council and of the said American Federation of Labor, and that all the said associations are associated and affiliated with each other and it is a part of the common plan and purpose of all of them to induce or compel, so far as possible, all workmen engaged in the various trades represented by the said associations to join the said unions or other unions and become affiliated with the said Building Trades Council and the said American Federation of Labor.

8. That the plaintiff is informed and believes and therefore avers that the said Derby Desk Company has employed heretofore and does now employ various workmen and laborers who are not members of any trades union; that by reason of the employment by the said Derby Desk Company of such non-union laborers the officers and agents of the said American Federation of Labor have unlawfully and fraudulently combined and conspired to injure and destroy the business of the said Derby Desk Company; that in pursuance of the said fraudulent conspiracy the said officers

and agents, and in particular the defendant Dennis Driscoll, have fraudulently and unlawfully induced the other labor unions above named and the defendants Cashman, Cameron, Platt, Barton, Noble, and Guntner to enter into a further fraudulent and unlawful combination and conspiracy, and that in pursuance thereof all the said labor unions and organizations and in particular the defendants Driscoll, Cashman, Cameron, Platt, Barton, Noble, and Guntner have fraudulently and unlawfully combined and conspired to interfere with, embarrass and destroy the business of the said Derby Desk Company and the business of other firms and corporations dealing with the said Derby Desk Company, and in particular to interfere with, embarrass and destroy the business of the plaintiff by reason of the said contract made by the plaintiff with the said Derby Desk Company.

9. That in pursuance of the said fraudulent and unlawful conspiracy the defendants Dennis Driscoll, Colin W. Cameron, and George M. Guntner called at the offices of the plaintiff on said Washington Street between five and six o'clock of the afternoon of this twenty-eighth day of April, and then and there coercively threatened the plaintiff through its treasurer, William E. Haskell, that unless the said desks ordered and purchased of the said Derby Desk Company, and partially installed in the plaintiff's new buildings, were ripped and torn out and returned to the said Derby Desk Company all union laborers employed on the construction and equipment of the said new buildings would be, on the evening of this twenty-eighth day of April, ordered to strike and quit work and desist from any further labor on or about the said buildings.

That there were then engaged in work on the said buildings certain electrical workers employed by the said Erickson Electrical Equipment Company, certain plumbers employed by the said Bresnahan Brothers, certain laborers employed by the said Salem Elevator Works, certain steamfitters employed by the said James Tucker & Sons Company, and certain carpenters employed by the said Fosburg Construction Company, the said workmen being engaged in installing electrical equipment for light and power, elevators for elevator service, plumbing and steam fitting, and in completing the carpenter work on the said buildings; that the plaintiff is informed and believes and therefore alleges that a large number, if not all, of the said workmen so employed were union workmen; that all the said workmen were willing and anxious to continue their work on and about the said buildings and had no grievances against their immediate employers nor against the plaintiff, and would not strike or quit work on and about the said buildings unless ordered to do so by the defendants above named; that under the rules of the unions to which the said workmen belong the members are liable to fines and penalties and forfeitures if they fail to comply with the rules and regulations of the said unions and the orders of the officers thereof; that the defendants Driscoll, Cashman, Cameron, Platt, Barton, Noble, and Guntner, as officers and members of the said unions and organizations, have power under the rules thereof to order the said workmen to strike and quit work, and the said workmen will be liable to penalties and forfeitures if they refuse to obey such order, and the plaintiff is further informed and believes and therefore alleges that if the threats above described are carried out and the said workmen are ordered to strike and quit work such order is likely to be obeyed by reason of the fines, penalties, and forfeitures to which the said workmen will be subjected for disobedience.

10. That the said contract with the Derby Desk Company was a large and important and valuable contract to the plaintiff; that the said desks cannot be torn out and rejected without great finan-

cial loss to the plaintiff, which would be obliged by its contract with the said Derby Desk Company to pay for the said desks and for the work of installing them, and at the same time to purchase other desks elsewhere and pay for the installation thereof; and that such action on the plaintiff's part would further involve great loss to, inconvenience, delay, and interruption of its said business.

11. That in addition to the fact that the plaintiff's material and equipment for carrying on its business has been largely transferred to the said new buildings, as above stated, the plaintiff had ordered deliveries of white paper for the printing of its newspaper at its old offices to cease, and had arranged for deliveries of white paper at its new offices; that the plaintiff uses large quantities of white paper, to wit, about 25 tons for each issue; that the presses in its said new buildings produce a newspaper different in size and appearance from the presses in the old building, and portions of papers to be published during the coming week have already been printed on the said new presses; that by reason of all the above facts it would be practically impossible to issue the regular editions of the plaintiff's paper from its old offices on Monday, April 30th next, and on subsequent days, in any except a most unsuitable and inadequate manner, involving great loss of reputation and prestige and great financial loss to the plaintiff; that by reason of the uncompleted condition of the work on and about the said new buildings it would be impossible to issue any editions of the plaintiff's paper therefrom if the said work should be interrupted before its completion as threatened by the defendants above named.

That unless the said unlawful acts threatened by the defendants as above stated are prevented by injunction the plaintiff will suffer irreparable injury and loss and is without remedy according to the course of the common law; that the plaintiff is informed and believes and therefore alleges that the defendants are endeavoring to carry out the said threats and to order the said workmen to strike and quit work.

Wherefore the plaintiff prays:

1. That the defendants Driscoll, Cashman, Cameron, Platt, Barton, Noble, and Guntner individually and as officers and agents of the said unions and organizations above named, and each of them, their servants, agents, confederates, and attorneys, be forthwith strictly restrained and enjoined from directly or indirectly inducing or seeking to induce the said workmen engaged on or about the plaintiff's said new buildings or any of them to strike or quit work or not to continue and complete the work upon which they are engaged until the further order of this Court, and further that said individual defendants as individuals and as officers of the said labor organizations be forthwith strictly enjoined and restrained until the further order of this Court from in any way interfering with the completion of the said work in and about the said buildings or with the conduct of the plaintiff's business, directly or indirectly, and from combining and conspiring so to interfere with the said work and business and from combining and conspiring to interfere with the plaintiff's contract with the said Derby Desk Company or to coerce and compel the plaintiff to reject and remove the said desks.

2. If it shall appear that the said order to strike and quit work has been given, that the said individual defendants, as individuals and as officers as aforesaid, be strictly enjoined and restrained until the further order of this Court from continuing the said order in force.

3. That the said individual defendants, as individuals and officers as aforesaid, be permanently enjoined from ordering the workmen to strike or quit work or continuing any such order in force, and from interfering in any way

with the completion of the said work or the conduct of the plaintiff's business or the carrying out of the plaintiff's contracts with the said Derby Desk Company or in any way coercing or unlawfully interfering with the plaintiff.

The Boston Herald Company,
By William E. Haskell,
Treasurer.

Commonwealth of Massachusetts.

Suffolk, ss. April 28, 1906

Then personally appeared before me the above-named William E. Haskell and made oath that he is treasurer of the Boston Herald Company, the plaintiff in the above bill, that he has read the above bill subscribed by him and knows the contents thereof, and that the same is true of his own knowledge, except as to matters which are therein stated to be on his information and belief, and as to those matters he believes them to be true.

Edward K. Hall,
Justice of the Peace.

Filed April 28, 1906.

Writ of Injunction.

Commonwealth of Massachusetts.

Suffolk, ss. To (the persons against whom the bill was brought). *Greeting:*

We command you that you appear before our Superior Court, at the rules to be holden at Boston within our county of Suffolk on the first Monday of June, next, then and there to answer to a bill of complaint exhibited against you in our said court, in the county of Suffolk by The Boston Herald Company, a corporation duly organized under the laws of Massachusetts, having its usual place of business at Boston in said county of Suffolk.

And you are hereby notified to appear before some of the justices of this court, at the equity session, first division, in the courthouse in Boston, in said county of Suffolk, on Monday, the thirtieth day of April current, at 10 o'clock, A.M., to show cause why an injunction should not issue as prayed for in said bill of complaint:

And in the meantime and until such hearing, you, the respondents Driscoll, Cashman, Cameron, Platt, Barton, Noble, and Guntner, and each of you individually and as officers and agents of said unions and organizations, your attorneys and counsellors, are enjoined and commanded to desist and refrain from directly or indirectly inducing or seeking to induce the workmen engaged on or about the premises on Tremont, Mason, and Avery Streets in said Boston mentioned in the bill, or any of them, to strike or quit work and from in any way interfering with the completion of the work in and about the said buildings or with the conduct of the plaintiff's business directly or indirectly and from combining and conspiring so to interfere with said work and business and from combining and conspiring to interfere with the plaintiff's contract with the Derby Desk Company mentioned in the bill or to coerce or compel the plaintiff to reject and remove the desks mentioned in said bill and to do and receive what our said Court shall then and there consider in that behalf.

Hereof fail not, under the pains and penalties, in the law, in that behalf, provided,

Witness, John A. Aiken, Esquire, at Boston, the twenty-eighth day of April in the year of our Lord one thousand nine hundred and six.

Henry E. Bellew,
Assistant Clerk.

Filed April 28, 1906.

Stipulation.

It is hereby stipulated and agreed by the parties in the above entitled cause that the defendants will not violate the prayer of the bill, that no injunction shall issue, that the *ad interim* injunction may be dissolved, and that the defend-

ants shall not be required to appear or answer further.

POWERS AND HALL,
Attorneys for Plaintiff.
FREDERICK W. MANSFIELD,
Attorneys for the Defendants, Driscoll, Cashman, Cameron, Platt, Barton, Noble, Guntner, and the defendant Labor Unions and Organizations.

Filed May 2, 1906.

4. THE WOODBURY AND LEIGHTON CO. v. MCGIVERN.

COMMONWEALTH OF MASSACHUSETTS.

SUFFOLK, ss. IN EQUITY.

SUPREME JUDICIAL COURT.

THE WOODBURY & LEIGHTON COMPANY, a corporation duly organized under the laws of the State of Maine, having its usual place of business in Boston in said county of Suffolk, brings this, its bill of complaint, v. EDWARD J. MCGIVERN, JAMES O'CONNOR, PATRICK O'CONNOR, all of Boston in said Commonwealth, individually and as they are officers and members of a voluntary unincorporated association, to wit: Union No. 10, Boston Branch, Operative Plasterers International Association of the United States and Canada, and all other members of said union, most of whom are to your complainant unknown; WILLIAM OSGOOD and WILLIAM PAWLEY of Salem in the County of Essex, individually and as they are officers and members of the Salem Branch of said Operative Plasterers International Association, a voluntary unincorporated association, and all the members of said association, most of whom are to your complainant unknown; and George Thornton of said Boston, vice-president of the Bricklayers and Masons International Union of America, individually and as he is an officer of the said union, which is a voluntary unincorporated association, and all the members and branches thereof, most of whom are to your complainant unknown, and John T. Walsh, of Cambridge, Edmund Russell and Theodore Eldracher, both of Boston, individually and as they are officers and members of Bricklayers Benevolent and Protective Association No. 3 of said Boston, a voluntary unincorporated association, and all other members of said union, most of whom are to your complainant unknown, said individuals being the officers chosen by said unions and associations for the management of their affairs and for doing the acts for and in behalf of said unions which are hereinafter recited as having been unlawfully done by said members of said unions and associations.

Amended Bill of Complaint.

And your orator complains and says that said Bricklayers Union No. 3 is a combination of brick masons in a so-called labor union. The said Boston and Salem branches of said Operative Plasterers International Association are also combinations of plasterers in so-called labor unions, and the Bricklayers and Masons International Union of America is a central organization to which the various local unions belong.

The said McGivern and James and Patrick O'Connor are respectively president, treasurer, and business agent of the Boston Plasterers Union No. 10. Defendants Osgood and Pawley are respectively president and secretary of the Salem branch of said union. Defendants Russell, Eldracher, and Walsh are respectively president, secretary, and business agent of said Bricklayers Union No. 3.

Your orator further says that on or about June 1, 1906, said Bricklayers Benevolent and Protective Union No. 3 presented to your orator the working rules or conditions with which your orator must comply or the members of said union would not thereafter work for it, which rules or conditions included the requirement that all foremen should be members of the union and that its business agent should be allowed to visit buildings in process of erection while attending to his official duties. Your orator declined to accept said rules or conditions, whereupon all the members of said Union No. 3 then in your orator's employ struck, and your orator was thereupon declared unfair by said Bricklayers Union and the Bricklayers International Association on account of its refusal to accept said conditions, and said strike now continues; the members of said union still refuse to work for your orator and they have hindered

and impeded your orator since said June 1, 1906, in various ways.

That your orator is at present constructing a high school building in Salem under contract therefor with the city of Salem and a new building for the registry of deeds in Salem under contract with the commissioners of the county of Essex, and that in the course of said construction it made a contract with the Robert Gallagher Company, a corporation in Boston engaged in the business of plastering, to perform the work of plastering upon said registry of deeds for the sum of ten thousand nine hundred and ninety-four (10,994) dollars, and a contract with Muir Brothers, a firm in Boston also engaged in the plastering business, to perform the work of plastering said high school for the sum of nine thousand eight hundred and seventy-five (9,875) dollars, and both said Gallagher Company and said Muir Brothers were, and are now, ready and willing to perform their said contracts except for the illegal interference of the defendants herein complained of.

And your orator further says that when said Gallagher Company and said Muir Brothers began preparations for the performance of their said contracts they were notified by the officers of said plasterers' unions in Boston and Salem that as your orator was on the unfair list of the bricklayers unions, and as they had been requested thereto by said bricklayers unions, they, the said plasterers, not only would not work for said Gallagher Company and said Muir Brothers upon said high school and registry of deeds, but threatened them that if they, or either of them, should attempt to carry out their said contracts with your orator that they, the said Gallagher Company and Muir Brothers, would be placed upon the unfair list of said plasterers' unions, not merely on this work, but on all other work upon which they might be then or thereafter engaged, and no members of said plasterers' unions would work for them.

Thereupon, and induced thereto by said threats, the said Gallagher Company and Muir Brothers, for that reason only, refused and still refuse to carry out their said contracts with your orator.

That thereupon your orator purchased material suitable for plastering, and hired men, and attempted, and is attempting, to do the plastering on said buildings by its own workmen, and said men are ready and willing to work for it except for the illegal interference by defendants hereinafter complained of, but the doing of said work by your orator is much more costly than through said contracts of the Gallagher Company and Muir Brothers, and your orator is suffering and has suffered great loss and damage by being compelled to do such plastering itself.

And your orator further says that the defendants herein have combined and conspired to prevent your orator from doing the plastering upon said buildings by its own workmen, and to carry out its said contracts for the construction thereof and in pursuance of said combination said plasterers' unions have voted to impose fines and penalties upon any of their members who perform work on said buildings, or either of them, and the defendants are placing pickets about said buildings to threaten any persons working for your orator in plastering, or who may desire to enter your orator's employ therefor, with fines and penalties, and in particular said plasterers' unions maintain pickets and agents to induce and incite your orator's said employees to leave its said employ and break their contracts of employment with it, and to induce other persons desiring to enter your orator's employ not to do so by the offer of bribes and other pecuniary inducements. And your orator says that it has and has had no controversy with said plasterers' unions, or any members thereof, but that the

action of said plasterers' unions herein complained of is sympathetic with said bricklayers' unions and at their request and is for the sole purpose of inducing and coercing your orator to yield to the demands of said bricklayers' unions.

And your orator further says that the actions herein complained of are part of a general and continuing conspiracy on the part of the defendants to compel your orator to accede to the demands of said bricklayers' unions and for the purpose of injuring your orator in its business.

And your orator further says that said combination and conspiracy is illegal and in restraint of trade, and if persisted in will seriously embarrass, if not ruin your orator in the prosecution of its said business, and said combination and conspiracy is intended to injure your orator and to prevent its carrying on its business in its own way, and the defendants are inflicting, and about to inflict, serious and irreparable damage to your orator. Said defendants, and each of them, are persons of limited financial resources and will be unable fully to respond in damages for the harm they have done and are about to do to your orator, and your orator is without adequate remedy at law.

And your orator further says that said plasterers' unions include in their membership substantially all the capable and experienced plasterers in Salem, Boston, and vicinity, and the plasterers generally throughout the country are to a very large extent members of similar unions confederated and affiliated with said unions, and it is substantially impossible to employ other plasterers and that they are hard to secure in view of the various illegal practices usually accompanying strikes.

Wherefore your orator prays that these defendants, and each of them, and all the members of said unions, be enjoined and restrained during the pendency of this action, as well as finally:

1. From interfering with the said Robert Gallagher Company and said Muir Brothers, and each of them, and all other persons or corporations that may now or hereafter be under contract with your orator by inducing them, by threats or otherwise, to break their contracts with your orator.

2. From interfering with your orator in the erection of a high school and registry of deeds in Salem, as well as in the erection of other buildings now or hereafter in the process of erection, by inducing or inciting any person or persons now in its employ to leave its employ, or who may desire to enter its employ from entering such employment by the imposition of fines and penalties, or by threats thereof, or by offering bribes or other pecuniary inducements, or by interfering with the plaintiff's business by picketing the streets in the vicinity of such buildings, and from interfering with the plaintiff's business by threatening, annoying, or hindering any person or persons now in or desiring to enter into its employ, and from persuading or endeavoring to persuade, or induce, any person or persons having contracts with the plaintiff to break the same, or from reporting the plaintiff as unfair.

3. That an account be taken of the loss and damage occasioned your orator by the illegal interference of the defendants with the performance of said Gallagher Company and Muir Brothers, and each of them, or their said contracts with your orator, and that the defendants, and each of them, be ordered to pay over said damages, when ascertained, to your orator.

Filed October 30, 1908.

Interlocutory Decree.

This case came on to be heard on the plaintiff's motion for a preliminary injunction against the defendant McGivern, and after hearing the parties and their witnesses it is ordered, adjudged, and decreed that the defendant Edward McGivern be and hereby is enjoined

and restrained until the final hearing in this case from interfering with men at work for the plaintiff on the high school and Registry of Deeds in Salem, Mass., in any manner, peaceful or otherwise.

Filed November 6, 1908.

Defendants' Answer to Amended Bill of Complaint.

Now come all the defendants in the above entitled case and for answer to the plaintiff's amended bill of complaint say:

1. They admit that Edward J. McGivern and Patrick O'Connor are officers and members of Union No. 10, Boston Branch, Operative Plasterers International Association of United States and Canada, and admit that James O'Connor is a member thereof, but deny that he is an officer; they deny that William Osgood and William Pawley of Salem are officers and members of the Salem branch of the said association and say that there is no such branch of said association, but they admit that William Pawley is an officer and a member of the local Salem branch of Bricklayers and Plasterers International Union and that William Osgood is a member thereof but not an officer; they admit that George Thornton of Boston is vice-president of the Bricklayers and Masons International Union of America and that the same is a voluntary unincorporated association, and that John T. Walsh, Edmund Russell, and Theodore Eldracher are officers and members of Bricklayers Local Union No. 3 of Boston, but deny that all the aforesaid individuals are chosen by any of the unions or associations mentioned to manage their affairs or for doing any unlawful acts as set forth by the plaintiff's bill and they say that they have no such power.

2. They admit that Bricklayers Union No. 3 is a labor union and that Bricklayers and Masons International Union of America is a central organization to which the various local unions belong, as is set forth in the first paragraph on page three of the plaintiff's amended bill of complaint, but they deny that there is a Salem branch of the Operative Plasterers International Association or that such branch is affiliated with the aforesaid international union; they admit that said Edward McGivern and Patrick O'Connor are respectively the president and business agent of Boston Plasterers Union No. 10, but they deny that James O'Connor is the treasurer thereof and say he is not treasurer but that he is a member; they deny that said William Osgood is the president of the Salem branch of Plasterers Union No. 10, but say that he is a member of the Salem Local Bricklayers and Plasterers Union, but is not president; they admit that said William Pawley is secretary of said Bricklayers and Plasterers Union, but not of a branch of the Operative Plasterers International Association of America; they admit that the defendants Russell, Eldracher, and Walsh are respectively president, secretary, and business agent of Bricklayers Union No. 3.

3. Answering to the first paragraph upon the fourth page of the plaintiff's amended bill of complaint that on or about June 1, 1906, a circular was issued to various firms of Boston and vicinity stating the conditions under which members of Bricklayers Union No. 3 would work on and after a certain day, the defendants say that such a circular was issued and admit that the rules and conditions contained in said circular included the requirements that all foremen should be members of the union and that its business agent should be allowed to visit buildings in the process of erection while attending to his official duties, and they state that there was also contained a request for higher wages and for shorter hours and that certain employers refused to accept said conditions, but do not know if the plaintiff so refused; they admit that there was a strike, but deny that the plaintiff was

declared unfair by said Bricklayers Union or by Bricklayers International Association on account of its refusing to accept said conditions or for any other cause; they admit that said strike now continues and that the members of said unions still refuse to work for the plaintiff, but they deny that they have hindered and impeded the plaintiff in various ways since June 1, 1906, as set forth in the plaintiff's amended bill of complaint, other than in a lawful manner.

4. They admit that the plaintiff is now constructing certain buildings in Salem, as set forth in the second paragraph on the fourth page of the plaintiff's amended bill of complaint, but they say that they do not know whether or not the plaintiff made a contract with the Robert Gallagher Company and with Muir Brothers, as set forth in said paragraph, or whether or not said Gallagher Company and Muir Brothers are ready and willing to perform said contracts, but they deny that said contracts were not carried out by reason of any illegal interference on the part of the defendants.

5. Answering to the second paragraph on page five of the plaintiff's amended bill of complaint, the defendants deny that said Gallagher Company and said Muir Brothers were notified that any of the defendants would not work for them, or that any Salem local union was so notified by Bricklayers Union No. 3 as alleged in said paragraph, and they deny that there were any threats made that said Gallagher Company and said Muir Brothers would be placed upon the unfair list of any plasterers' union whether the said list referred to the work in Salem or any other work as alleged in said paragraph.

6. The defendants say that they do not know whether said Gallagher Company and said Muir Brothers refused to carry out their contracts or not and leave it to the plaintiff to prove the same, but they deny that if they did so refuse that it was on account of threats made against them by the defendants or any of them.

7. The defendants neither admit nor deny the allegations contained in the second paragraph of page six of the plaintiff's amended bill of complaint, but they deny that there was any illegal interference with the business of the plaintiff as alleged in said paragraph.

8. The defendants deny that they have combined and conspired to prevent the plaintiff from doing the plastering upon said buildings or to prevent its carrying out any contracts it might have had for the construction thereof, or that any of the defendants or any of the unions or organizations sought to be joined as defendants have ever imposed fines or penalties upon any of their members who work upon said buildings or have ever voted to impose fines and penalties; they deny that they have pickets placed upon said buildings to threaten any of the plaintiff's workmen, or any person who may desire to enter its employ, with fines and penalties or with any other punishment, and they deny that said plasterers' unions maintained pickets and agents to induce and incite the plaintiff's employees to leave its employment and break contracts of employment with the plaintiff, and they say that if any employees were induced to leave the plaintiff's employment that they were not so induced by any illegal or unlawful means employed by the defendants; they admit that they have endeavored to prevent workmen from entering the employment of the plaintiff, but that said workmen were members of some of the various unions sought to be joined as defendants and that no illegal means were employed by these defendants to accomplish that result; they deny that any sympathetic strike or sympathetic action of any kind has been taken by any plasterers' union in order to assist any bricklayers' union in any controversy they may have

had with the plaintiff, and they again deny any general or continuing conspiracy on their part to coerce or compel the plaintiff to accede to the demands of the defendants for the purpose of injuring the plaintiff or for any other purpose.

9. Answering to the last paragraph on page seven of the plaintiff's amended bill of complaint, the defendants say if there was any combination, as set forth in the plaintiff's bill, that it was not illegal and in restraint of trade, but was allowable under rules of trade competition and as a means of enforcing a justifiable and legal strike, or that any such combination was or is intended to injure the plaintiff in its business or to compel the plaintiff to manage its business according to the dictates of the defendants and they deny that they have illegally inflicted any serious or irreparable damage upon the plaintiff. The defendants admit that substantially all the capable and experienced plasterers in Boston and vicinity and generally throughout the country are to a large extent members of similar unions and that it is hard to secure other plasterers to do plastering work, but they deny that such hardship was inflicted by any illegal practice used or adopted by them.

10A. The defendants say that all of the members of the various organizations included in the plaintiff's bill of complaint as defendants amount in numbers to many thousands, and that the individual members joined as defendants are not a sufficient number to fairly represent all those sought to be joined in said bill; they further say that the plaintiff seeks to join as defendants "all the members and branches" of the Bricklayers and Masons International Union of America, and that this association has branches in every State in the United States of America and in Canada and that this Court has no jurisdiction over any members or branches thereof existing without the Commonwealth of Massachusetts, and the plaintiff's bill should be dismissed for want of jurisdiction.

10B. And further answering to the second paragraph on the fourth page of the plaintiff's amended bill of complaint, the defendants say that if such contracts were made as alleged and said Robert Gallagher Company and said Muir Brothers refuse to carry out the same, and the plaintiff is suffering great loss thereby, the plaintiff's remedy is an action at law for damages against said Robert Gallagher Company and said Muir Brothers, and the defendants cannot be held to answer to this bill of complaint by reason of any breach of said contracts on the part of said Robert Gallagher Company and said Muir Brothers.

10C. And further answering to the second paragraph on page five of the plaintiff's amended bill of complaint, the defendants say that if any threats were made as alleged against said Gallagher Company and said Muir Brothers that this plaintiff cannot complain therefor, and that said Gallagher Company and said Muir Brothers should be made complainants to this bill before the defendants can be compelled to answer to the allegations contained in said paragraph.

11. And the defendants say that the plaintiff has a plain, adequate, and complete remedy at law for the damage complained of.

Wherefore your defendants pray that the temporary injunction now in force against Edward J. McGivern be dissolved, the bill dismissed, and that the defendants be allowed their costs.

Filed November 13, 1908.

Finding and Order for Decree.

Loring, J. In June, 1906, the Bricklayers Union No. 3 of Boston made a demand upon the plaintiffs for better wages. It was one of three demands. They were all refused, and, therefore, as in the Willcutt case, I do

not find it necessary to decide whether the other two demands were legal demands. By legal demands I mean demands which would justify a strike. I think, therefore, that that strike was a legal strike.

The result of Woodbury & Leighton Company not complying with these demands was that, in the language of the labor unions, they were declared "unfair." I do not expect to use that word again in deciding this case. I think it is misleading. I think it misleads the labor unions. I think it will tend to clarify the rights of the employees and of the employers if the labor unions should understand more clearly what declaring a firm "unfair" means. All that is meant by declaring a person or firm to be unfair is that the labor union has struck against that person or firm and that that strike is still on, that is to say, it has not been declared off. I think it would make the relations of employer and employee in reference to strikes clearer if it was understood that that is what declaring an employer of labor to be unfair means.

When the plaintiffs in June, 1906, refused to give the wages which the Bricklayers Union No. 3 asked for that union had the right not to work for the plaintiffs, and had a right, by peaceable means, to persuade others not to take their places and work for them until that demand was complied with. But that is the limit of the rights of that labor union.

Now, what took place? Two years afterwards the Bricklayers Union No. 3, not having obtained, as I have said, what they wanted in the way of better wages, and finding that Woodbury & Leighton Company were building two buildings in Salem, sent word to the Salem union of Bricklayers and Masons No. 25 that they, to use their language for the moment, considered Woodbury & Leighton unfair, — which means that they had struck against Woodbury & Leighton Company, — and asked the Salem Union No. 25 to back them up, which the Salem Union No. 25 did. At their instance the Salem union agreed that their members should not do plastering work for Woodbury & Leighton Company.

Not only that, but the Bricklayers Union No. 3 of Boston and the Salem Union No. 25 then applied to the Plasterers Union No. 10 of Boston to do the same thing; and they did the same thing. They refused to work for and they struck against Woodbury & Leighton in order to get better wages for the bricklayers of Boston.

I find that at that time, and that at no time since June, 1906, down to the present time, has there been any trade dispute between the plasterers and the plaintiffs, — either the plasterers of Salem or the plasterers of Boston, — and I find that that action of the two unions of plasterers, the Salem union and the Boston union, was taken at the instigation of the Bricklayers Union No. 3 of Boston in order to help them to obtain from Woodbury & Leighton better wages as bricklayers and the other demands which they asked for, and for no other reason.

The practical situation became apparent when it was proved and admitted to be the fact that practically all the plasterers in the vicinity of Boston and Salem are union men. I do not hesitate to find that it was for this reason that the bricklayers of Boston thought they had found their opportunity of forcing Woodbury & Leighton to give them better wages for their work as bricklayers. Apparently there are plenty of bricklayers, and for that reason the strike which was still on, instituted by the Bricklayers Union No. 3 against Woodbury & Leighton, had not troubled them; but when it came to a question of plasterers, inasmuch as the union had in their ranks practically all the plasterers in the neighborhood, then if the bricklayers could get the plasterers to support them in their strike they had an

opportunity of putting pressure upon Woodbury & Leighton which they had reason to hope and believe would be insuperable.

The strikes of the Salem Union No. 25 and of the Boston Plasterers Union No. 10 came about in the following manner. In the Summer of 1908 Woodbury & Leighton asked Muir Brothers and the Gallagher Company to bid on the plastering for the Salem high school and for the new registry of deeds in Salem, and both of these two parties either made a contract or were ready to make a contract with Woodbury & Leighton Company, but subsequently refused to perform the contract (if one was made) or (if one was not made) refused to complete the making of the contract solely because of the action of these two unions.

I am going to say a word in a moment as to Mr. Mansfield's argument based on *Beekman* v. *Marsters,* but it is only necessary now to say that I think it is entirely immaterial whether a contract had been made between the plaintiffs and Muir Brothers and between the plaintiff and the Gallagher Company or not. To complete the finding in this respect I find that the sole reason why Muir Brothers and the Gallagher Company did not complete the making of the contract, if one had not been made, or did not perform it if it was made, was because they were told by these unions that union plasterers would not work or be allowed to work on these jobs because they were contracts with the plaintiff and in addition that all union workmen on other jobs for them (Muir Brothers and the Gallagher Company) in other places would strike if they (Muir Brothers and the Gallagher Company) employed non-union labor on these jobs in Salem.

Now, Mr. Mansfield, I think you misapprehend the case of *Beekman* v. *Marsters,* and I want to say a word with regard to that. The doctrine of *Beekman* v. *Marsters* is not that in order to get relief against a combination of workmen an employer has to show that he has a contract which has not expired and that the labor union has undertaken to interfere with such a contract. The rule of law is this: Every man in the community has a right to do business; to do any business which he chooses to enter upon. No man in the community has a right maliciously to interfere with that business unless there is a justification for the interference. It is a justification for interfering with the business of any employer of labor that the defendants, as laborers, in an endeavor to better their condition have refused to work for him, that is, have struck. That is a justification for an interference with the business of an employer. The right of the employees to combine together to better their condition is a justification for knowingly interfering with an employer's business by striking, but if the plaintiff has a contract with a third person there is no justification for interference. Competition is not a justification for interfering with a contract already made, although competition is a justification for preventing a contract being made. That is what was decided in *Beekman* v. *Marsters,* and that is all that was decided in that case. In that case the defendant undertook to justify an interference with the plaintiff's business by saying, "I am a competitor." The plaintiff answered, "I had a contract, and you have undertaken to induce the other party to that contract to break it." This court held that competition was not a justification for that. But if it had been a question of getting a contract made, competition would have been a justification.

In this case at bar the question which I have to decide is entirely free from *Beekman* v. *Marsters.* The plaintiffs come into court and say, "Our business has been interfered with"; and the defendants say, "Yes, we did interfere, but we were justified." If all that had

been done in this case had been that the Bricklayers Union No. 3 of Boston had struck, and had stopped there, or, in addition to that, if it had appeared that they used peaceful means to dissuade others from going to work for Woodbury & Leighton, as bricklayers, that would have justified an interference with Woodbury & Leighton's business. But the case does not stop there. They not only did that, but they asked the Bricklayers and Masons Union No. 25 of Salem to stop doing plastering work for Woodbury & Leighton in order to help them to get the better pay as bricklayers, and through the Bricklayers Union No. 25 of Salem they undertook to ask the Plasterers Union No. 10 of Boston to do the same thing. And the question therefore comes down to this: Is getting better wages for bricklayers of another union a legal justification for a labor union of plasterers instituting a strike? I have no hesitation in saying that it is not.

That brings me to the consideration of the grounds on which it has been contended that it was a legal justification. In a word those grounds are these: Organized labor has divided the territory of Massachusetts into certain districts. Having done so, the defendant labor organizations have made a treaty by which one labor organization shall not intrude into the territory of the other labor organization. In Boston the plasterers are organized under the Operative Plasterers International Association. In Salem they are organized under the Bricklayers and Masons International Union of the United States and Canada. Those two international bodies have agreed that if any member of one body wishes to work as a union man in the territory of the other he must join the other association for the time being. It has been argued here that as a result of this treaty as soon as a Boston plasterer joins the Salem union of bricklayers and plasterers, since bricklayers are members of the Salem union, all the Salem plasterers have a right to strike to get better wages for Boston bricklayers; and once having got the bricklayers and plasterers of Salem to join in the strike in that way the plasterers of Salem could ask the plasterers of Boston to do the same.

The difficulty I have with that argument is that it assumes that under all circumstances and for all purposes these agreements between the two international associations are necessarily valid, and that anything that comes in their way must yield and are invalid. The contrary, just the contrary, is the truth. These agreements may be perfectly innocent and proper for many purposes, but when the result of these agreements is that the plasterers of Salem and the plasterers of Boston, who have no trade dispute with the plaintiff, undertake to justify a strike on the plaintiff to help out the trade dispute which the plaintiffs have with the bricklayers of Boston, these agreements are invalid and are not a justification. The defendant, in the argument addressed to me, contends that the agreements between these two international bodies are valid and must be sustained in any event. I rule that they are invalid if they result in a sympathetic strike; and I find as a fact in the case at bar that they did result in a sympathetic strike.

Therefore I find that in this case the plaintiffs are entitled to an injunction restraining the members of the Salem Union No. 25 of the Bricklayers and Masons International Union and the Boston union of Plasterers Union No. 10 of the Operative Plasterers International Association, in case of each union, from combining and conspiring together to force the Woodbury & Leighton Company to comply with the demands of Bricklayers Union No. 3 of Boston. There may be a declaration in the writ of injunction that the only purpose for which they have undertaken to conspire together not to work for the plaintiffs is in order to secure better wages for

the bricklayers of Boston. They are to be restrained from combining and conspiring together not to work for Woodbury & Leighton. It will also be provided in the writ of injunction that the Boston Union No. 3 of bricklayers is restrained from inducing Boston Union No. 10 of plasterers and Salem Union No. 25 of the Bricklayers and Masons International Union to refuse to work for the plaintiffs. The decree is to be a broad decree of that kind, based upon the fact that the strike of Salem Union No. 25 and the Boston Union No. 10 is an illegal one. The members of those unions are restrained from combining together not to work for the plaintiffs.

Some confusion has cropped out during the argument of the defendants' counsel, and I will say a word about it. Of course no individual member of the community is forced to work for any employer. A court of equity will never tell an individual that he has to work for an employer. But where two members of a community combine together not to work for an employer then they commit an act. When an individual refuses to work he merely refuses to act, but he does not do an act. But where two or more combine to refuse to work in order to force some one to do something he does not want to do then they commit an act, and it is that act which brings them within the power of the law. It is that which the court will enjoin.

I think there has been sufficient representation here of the members of the Plasterers Union No. 10 and of the Bricklayers Union No. 3 of Boston and of the Salem Union No. 25. I think, however, Mr. Elder, that the description of the Salem Union No. 25 is a misdescription and that will have to be amended. It is described as the Salem branch of the Operative Plasterers International Association, and it was really a member of the other association, the Bricklayers and Masons International Union, and you will have to make a formal amendment there.

As to my taking jurisdiction over the Bricklayers and Masons International Union of the United States and Canada, I should have great hesitation in doing that. In the first place I have grave doubts whether this court ought to do that under any circumstances, for the reasons I have already stated in the course of Mr. Elder's argument. Presumably the members of that body are not within this jurisdiction. The rule of pleading in equity that you can make a numerous body parties defendant by suing certain individuals, as representatives of the class, is based upon the fact that the members of the body itself are within the jurisdiction of the court and might be made defendants themselves. But that is not true of this unincorporated body of people. The rule which enables a plaintiff to make a numerous class of people parties defendant by joining persons as representatives of that class is a rule of practice as to parties within the jurisdiction of the court, and it is not a rule which can be invoked to extend the court's jurisdiction.

I do not think in this case, however, that I have to meet that question. Neither do I think that in this case I have to meet the question which Mr. Elder raised as to how far a local labor union of the same craft can strike to help other local organizations in a trade dispute which they have. There is much to be said on that question. It may be that the court will eventually decide that a local union in California cannot strike to help a local union in Boston to secure better wages for the Boston local union if the California union is getting all that it wants. It may be, however, that the court will not come to that conclusion. In this case the only interference by the defendants, or any of them, which would give rise to any necessity for a decision on that point is Mr. Thornton's going down to Au-

burn, Me. That is an individual instance, and based on that individual instance I shall not issue an injunction. In other words, I do not think there has been enough interference of that kind to justify an injunction on that ground. For these reasons I do not have to consider these questions.

The bill, therefore, will be dismissed (but it will be without prejudice) as against the members of the Bricklayers and Masons International Union of United States and Canada.

The injunction will run, therefore, against the defendants who are named here and against the members of the three local unions.

In that connection, Mr. Mansfield, I want to say a word about something which you assumed in the course of your argument and which I do not think is law. I do not think that when an injunction is issued against the members of a union a member who violates it not knowing of the injunction can be attached and punished for contempt. I do not suppose that any person can be punished for contempt of an order of which he is ignorant. In equity it is not uncommon, in fact, it is very common, in issuing an injunction against individuals, to make the injunction run against them and their agents, servants, and attorneys. But in order to bind these agents, servants, and attorneys, the injunction must be served upon them, or otherwise brought to their knowledge, before they can be attached for contempt of it. In this case the injunction against all the members of a union stands on the same footing. It names them. But a member who violates such an injunction cannot be attached for contempt if he never knew it. In other words, in an attachment for contempt a plaintiff must prove service on the defendant or knowledge on his part.

If the parties do not agree upon the terms of the decree that matter may be brought to my attention. I have indicated the general lines on which it is to be drawn.

In regard to the new defendants who were sought to be joined by the amendment to the bill last Friday I think that the order may be that the bill be discontinued against those defendants on paying the taxable costs, whatever they are, and I understand from Mr. Mansfield that Edward Meleedy, James Moloney, Henry J. Saunders, George J. Twiss, and Daniel H. Driscoll were present here in court on Monday as such new defendants.

Filed November 23, 1908, as of November 18, 1908.

Final Decree.

This case came on to be heard after issue joined, and upon hearing the parties and their evidence and arguments of counsel thereon, and upon consideration thereof, and it appearing to the court that the officers and members of the voluntary unincorporated association known as Union No. 10, Boston Branch Operative Plasterers International Association of United States and Canada, and the Bricklayers and Plasterers Union No. 25 of Salem, Massachusetts, have combined and conspired together not to work for the complainant, in order thereby to secure better wages for the members of the voluntary unincorporated association known as the Bricklayers Benevolent and Protective Union No. 3 of said Boston, which has incited them thereto, and for no other purpose, it is

Ordered, adjudged, and decreed that the defendants Edward J. McGivern, James O'Connor, Patrick O'Connor, and all other officers and members of said Union No. 10, Boston Branch Operative Plasterers International Association, their servants, attorneys, and agents, the defendants William Osgood and William Pawley, and all other officers and members of said Bricklayers and Plasterers Union No. 25 of said Salem, their servants and agents, be, and hereby are.

perpetually enjoined and restrained from combining and conspiring together to force the complainant Woodbury & Leighton Company to comply with the demands of the said Bricklayers Benevolent and Protective Union No. 3 of said Boston, and in the case of each of said unions, and all members thereof, are further enjoined and restrained from combining and conspiring together, by reason of the failure of the complainant to comply with the demands of said Bricklayers Benevolent and Protective Union No. 3 aforesaid, not to work for the complainant or for any other person, firm, or corporation who may be now, or hereafter, under contract with the complainant, and by attempting to carry on such combination and conspiracy by the imposition of fines and penalties, or by threats thereof, or in any other manner whatsoever; and said defendants are further enjoined and restrained from carrying on the combination and conspiracy aforesaid not to work for the complainant by reason of the failure of the complainant to comply with the demands of the said Bricklayers Benevolent and Protective Union No. 3 aforesaid:

1. By interfering with the complainant in the erection of a high school and registry of deeds in Salem, and of any other buildings now or hereafter in process of erection by it, by inducing or inciting any person or persons now in its employ to leave such employ, or who may desire to enter into its employ from entering therein, in any way or manner, by the imposition of fines and penalties, by threats thereof, or otherwise; or

2. By interfering with the plaintiff's business by picketing the streets in the vicinity of any such buildings, and

3. By threatening, annoying, or hindering any person or persons now in, or desiring to enter into, its employ, and

4. By persuading and endeavoring to persuade any person or persons who may now or hereafter have contracts with the plaintiff to break the same, and from reporting the complainant as unfair by reason of the failure of the complainant to comply with the demands of the Bricklayers Benevolent and Protective Union No. 3 aforesaid.

And it is further ordered, adjudged, and decreed that the defendants Russell, Eldracher, Walsh, Thornton, and all other officers and members of the said Bricklayers Benevolent and Protective Union No. 3 of Boston, their servants, attorneys, and agents, be, and hereby are, perpetually enjoined and restrained from inducing in any manner or by any means the said Union No. 10, Boston Branch Operative Plasterers International Association, and each and every member thereof, and the said Bricklayers and Plasterers Union No. 25 of Salem, and each and every member thereof, to refuse to work for the complainant, or for any person, firm, or corporation who may now or hereafter be under contract with the complainant, by reason of the failure of the complainant to comply with the demands of the said Bricklayers Benevolent and Protective Union No. 3 aforesaid.

And it is further ordered, adjudged, and decreed that the bill may be dismissed without prejudice and without costs against the members of the Bricklayers and Masons International Union of the United States and Canada.

And it is further ordered, adjudged, and decreed that the complainant recover its costs of suit, to be taxed in the sum of one hundred and twenty-nine and $^{19}/_{100}$ dollars, and that execution issue therefor.

And it is further ordered, adjudged, and decreed that the defendants Edward Meleedy, James Moloney, Henry J. Saunders, George J. Twiss, and Daniel H. Driscoll each recover their costs taxed in the sum of five dollars and thirty-three cents, and that execution issue therefor.

Filed November 27, 1908.

5. J. Stevens Arms and Tool Company *v.* John H. Gilmartin *et als.*

Temporary Injunction.

Commonwealth of Massachusetts.

Hampden, ss In Equity. Superior Court.

To John H. Gilmartin, Richard Egger (or Eggers), John J. Shannahan, Dennis B. Houlihan, and John J. Shea, as officers of a voluntary association known as Local No. 27, Metal Polishers International Union, of Chicopee, in said county, and certain other persons, their agents, attorneys and counsellors, and each and every of them, *Greeting:*

Whereas it has been represented to us in our Superior Court by J. Stevens Arms and Tool Company, a corporation duly established by law and having a usual place of business at Chicopee Falls in said county, complainant, that it, said complainant, has filed a bill of complaint in our said court against you, the said respondents, wherein said complainant, among other things, prays for a writ of injunction against you, the said respondents, to restrain you and the persons before named from doing certain acts and things in said bill set forth, and hereinafter particularly specified and mentioned. We therefore, in consideration of the premises, do strictly enjoin and command you, the said respondents, and all and every the persons before named, to desist and refrain from posting or maintaining pickets or patrols upon the sidewalks or streets in front of or in the vicinity of the plaintiff's said premises, as aforesaid, for the purpose of inducing or compelling any person or persons who now are or may hereafter be in or desirous of entering the plaintiff's employ to leave said employ or to desist and refrain from entering the same; from anywhere threatening, intimidating, or annoying or otherwise disturbing or interfering with, either directly or indirectly, any person or persons who now are or may hereafter be in or desirous of entering the plaintiff's employ for the purpose of inducing or compelling said person or persons to leave said employ or to desist or refrain from entering the same; from following any products of the plaintiff's said business for the purpose of learning what person or persons have purchased said products and inducing such person or persons to desist from buying the products of or dealing with the plaintiff; and from posting or displaying in any open, public, or conspicuous place, or in any way distributing any placard or placards or other printed or written matter containing and applying to any person or persons in the plaintiff's employ the term "scab" or any other opprobrious or annoying term or epithet calculated and intended to induce and compel said persons to leave said employ.

Until the further order of our said court, or some justice thereof. Witness, John A. Aiken, Esquire, at Springfield, the twenty-seventh day of April in the year of our Lord, one thousand nine hundred and six.

Robert O. Morris,
Clerk.

Filed April 27, 1906.

IV.

CASES RELATING TO LABOR DISPUTES IN MASSACHUSETTS, 1898–1908.

The following is a record of the proceedings in the cases arising from industrial disputes in the courts of Massachusetts from 1898 to 1908, arranged by years and counties:[1]

1898.

HAMPDEN COUNTY.

PAUL J. PLANT *et als. v.* HENRY K. WOODS *et als.*

366 Eq.

Oct. 14, 1898. *Bill* filed.

See report of the decision of the Supreme Judicial Court in this case, 176 Mass. 492, *ante,* p. 44.

Apr. 8, 1899. *Petition for attachment for contempt.* See *post,* p. 148.

1899.

SUFFOLK COUNTY.

SAM H. MITCHELL *v.* JOSEPH T. WALSH *et als.*

105 Eq.

Feb. 17, 1899. *Bill* setting forth a strike and boycott against plaintiff, a baker; threats to employees and customers; violence, sympathetic boycotts, and other intimidation; circulation of posters declaring plaintiff "unfair." Asks injunction.

Mar. 6, 1899. *Findings* by the court, and *order for decree,* sustaining allegations of bill and ordering an injunction against the acts complained of.

Mar. 8, 1899. *Temporary injunction* as ordered.

HAMPDEN COUNTY.

BAUSH & HARRIS MACHINE AND TOOL COMPANY *v.* JOHN J. HAMMOND *et als.*

205 Eq.

Sep. 19, 1899. *Bill* substantially like *Walker* v. *Clark.* See *ante,* p. 99.

Sep. 20, 1899. *Temporary injunction* forbidding picketing, intimidation of present, future, or prospective employees, or customers by any means, following of merchandise to determine to whom sold, etc.

Jan. 6, 1900. *Defendant's answer.*

Dec. 1, 1900. *Bill dismissed,* no further action having been taken.

DANIEL F. AUSTIN *et als. v.* CHARLES SIMPSON *et als.*

360 Eq.

May 24, 1899. *Bill* setting forth the existence of the rival unions engaged in the controversy out of which *Plant* v. *Woods, supra,* arose and seeking to get possession of money deposited in savings bank and claimed by both parties.

Dec. 20, 1899. *Injunction* against paying either side until order of court.

Mar. 17, 1900. *Cross-bill* stating other side of case.

Dec. 12, 1900. *Both bills dismissed,* by agreement.

NORFOLK COUNTY.

FRED MARTELL *v.* JAMES N. WHITE *et als.*

732.

See the decision of this case by the Supreme Judicial Court, 185 Mass. 255, *ante,* p. 52.

1900.

SUFFOLK COUNTY.

JOHN MILLER *et al. v.* FREDERICK J. KNEELAND *et als.*

232 Eq.

Jun. 21, 1900. *Bill* setting forth a strike and boycott against plaintiffs, who were liquor dealers, by Central Labor Union of Boston, Bartenders Union, and others. Alleges intimi-

[1] Formal motions, demurrers, and interlocutory matters of merely technical importance have ordinarily been passed over without notice.

dation of customers and employees, circulation of posters (advising public not to drink plaintiff's brand of whiskey), etc.

Aug. 1, 1900. *Master's report* of facts as to necessity of temporary injunction.

Aug. 1, 1900. *Temporary injunction* ordered by agreement.

May 27, 1901. *Case dismissed,* by agreement.

JACOB V. ALTHER *v.* JAMES J. MCCLUSKEY *et als.*

280 Eq.

Oct. 1, 1900. *Bill* alleging a boycott and asking injunctions.

Oct. 16, 1900. *Taken off list,* by agreement.

HAMPDEN COUNTY.

THE CHAPMAN VALVE MANUFACTURING COMPANY *v.* JOHN P. O'CONNELL *et als.*

316 Eq.

Mar. 17, 1900. *Bill* substantially like that in *Walker* v. *Clark.* See *ante,* p. 99.

Mar. 17, 1900. *Temporary injunction* (*ex parte*)[1] forbidding picketing or other forms of intimidation.

May 2, 1900. *Defendants' answer.*

Dec. 1, 1900. *Bill dismissed.*

1902.

SUFFOLK COUNTY.

R. S. BRINE TRANSPORTATION COMPANY *v.* TEAM DRIVERS' INTERNATIONAL UNION.

658 Eq.

Jan. 24, 1902. *Bill* alleging strike for recognition of union, patrolling, assaults on employees, and coercion of customers by threats and order of sympathetic strike. Asks injunctions.

Jan. 24, 1902. *Injunction ad interim* against acts complained of.

Feb. 28, 1902. *Ad interim injunction continued as temporary injunction,* accompanied by *finding* by the court sustaining allegations of bill.

AMERICAN WOOLEN COMPANY *v.* THE WEAVERS UNION *et als.*

825 Eq.

Jun. 3, 1902. *Bill* alleging sympathetic strikes, picketing, intimidation, and boycotting of persisting and new employees. Asks injunctions against picketing, interference with employees, customers, etc.

Jun. 3, 1902. *Temporary injunction* issued as prayed for against picketing plaintiff's mills and patrolling adjacent streets, intimidating or annoying present, future, or prospective employees by threats, violence, or attempting, by such means, to prevent their obtaining food or lodging; and also against interference with customers of plaintiff, "and from in any way interfering with the conduct of business by the complainant as now carried on and conducted by it."

Jun. 23, 1902. *Petition for attachment of certain defendants for contempt* in violating the injunction. See *post,* p. 148.

Aug. 1, 1902. *Master's report* as to facts of contempt.

Sep. 24, 1902. *Decree dismissing proceedings for contempt.*

AMERICAN WOOLEN COMPANY *v.* THE WEAVERS UNION *et als.*

842 Eq.

Jun. 17, 1902. *Bill* substantially similar to that in the previous case alleging a sympathetic strike in other mills operated by the complainant.

Jun. 19, 1902. *Temporary injunction issued as prayed for by agreement.*

Aug. 4, 1902. *Answer* of certain individual *defendants.*

Sep. 3, 1902. *Petition to adjudge in contempt* two of the members of the striking unions for violation of the injunction on certain days named. See *post,* page 148.

[1] *I.e.,* issued upon the filing of the bill without the defendants being heard.

Levi Sobolsky *v.* United Garment Workers *et als.*

865 Eq.

Jun. 27, 1902. *Bill* alleging that plaintiff was a member of the defendant union and had been unjustly expelled therefrom; that his discharge had been procured by threat of strike upon his employer and his re-employment prevented by similar intimidation. Asks injunction against interference, reinstatement in union, and damages.

Jul. 24, 1902. *Bill dismissed by consent.*

Massachusetts Breweries Company *et als. v.* Frank H. McCarthy.

893 Eq.

Jul. 17, 1902. *Bill* alleging failure to agree on terms of working agreement with United Brewery Workers and resulting general strike; boycott of "Boston Beer," placards, etc.; picketing of customers' places of business; intimidation and inducement of employees to break existing contracts.

Jul. 24, 1902. *Referred to master* on question of issuing temporary injunction.

Aug. 10, 1902. *Master's report* with findings that both the union and the "Boston Brewers' Association" had prepared for the strike; that "Boston Beer" had been declared "unfair;" and that cards had been posted in many saloons in Boston, Lowell, Providence, etc., bearing the words "No Boston Beer sold here." That the union officials who tendered these cards to the saloon men had uttered neither instructions nor threats; that none were needed; that there had been a few sporadic cases of violence, but that the defendants as a whole were not responsible for them; that there had been a few instances of insults to non-union workmen, etc., but the defendants as a whole were not responsible for them and had discountenanced them; that saloons had been watched and if "Boston Beer" had been sold in them the return of the placard was demanded; . . .

Aug. 20, 1902. *Temporary injunction* forbidding intimidation of employees; coercion of customers not to deal with plaintiffs or to sell their product; against "publishing, circulating, or exhibiting any card or notice like or similar in purport or effect to that referred to in the master's report"; from representing or causing to be represented that the plaintiffs are "unfair;" and from interfering with or molesting any person in the purchase of such beer.

Aug. 19, 1903. *Case dismissed,* by agreement.

James W. Kenney *v.* Frank H. McCarthy *et als.*

899 Eq.

See the previous case. This case was substantially identical.

Jerome E. Lynch *v.* John T. Cashman *et als.* (Building Trades Council).

970 Eq.

Aug. 27, 1902. *Bill* alleging difficulties with union because of employment of non-union men; threats of strike and general strike of all workmen employed on the "Majestic Theatre" upon which plaintiffs were doing part of the work. Asks injunction against threatening plaintiffs' customers and calling or persisting in strikes on building upon which plaintiffs were employed.

Sep. 4, 1902. *Reference to master* on question of temporary injunction.

Oct. 27, 1902. *Master's report* describing plaintiffs' business; organization of Building Trades Council and other defendant unions; pre-

vious trouble and suit by plaintiffs; visits of business agents to those making contracts with plaintiffs, and strike.

Nov. 7, 1902. *Memorandum* by Justice Braley. "Injunction to issue unless defendants file a stipulation."

Nov. 14, 1902. *Temporary injunction* against interference with plaintiffs by threats to customers on three contracts in question, or other coercion or interference with present or prospective employees.

Nov. 20, 1902. *Petition for attachment for contempt* against certain defendants. See *post*, p. 148.

SETH B. WETHERBEE *et als. v.* J. J. MCLAUGHLIN *et als.*

1529 Eq.

Aug. 27, 1902. *Bill* substantially like that in *Walker* v. *Clark* after alleging that the strike grew out of the refusal of the members of the Electrical Contractors Association to accept a certain working agreement.

Sep. 4, 1902. *Referred to master* on question of issue of temporary injunction.

Sep. 25, 1902. *Master's report* finding that individuals named had no power to order strike, but that the business agent's duties were to assist in conducting a strike where one had been ordered; that there had been no concerted action to threaten injury, personal or social, or to insult; some instances of threats of sympathetic strike; "that Mallory and Cashman are engaged in a systematic effort to compel plaintiffs to accede to the terms of the proposed agreement. Mallory by using every argument of persuasion, without threats or violence, to get every efficient non-union electrical worker to join the union. Sheehan and Cashman by intimating to those having contracts with the plaintiffs that the union carpenters and masons will not continue to work on the same buildings with the non-union men employed by the plaintiffs; that Local Union No. 103 and Boston Trades Council intend to continue these efforts through their business agents till the plaintiffs accept the defendants' terms. . . ."

Oct. 3, 1902. *Temporary injunction denied* on the coming in of this report.

The following cases were identical with that of *Wetherbee* v. *McLaughlin*, and were disposed of in the same manner: *Lord Electric Company* v. *J. J. McLaughlin et als.*, 1526 Eq.; *Seth W. Fuller et als.* v. *J. J. McLaughlin et als.*, 1530 Eq.; *Wilkinson et als.* v. *J. J. McLaughlin et als.*, 1531 Eq.; *Edwin C. Lewis* v. *J. J. McLaughlin et als.*, 1532 Eq.

NEW ENGLAND RAILWAY PUBLISHING COMPANY *v.* WILLIAM J. LOONEY *et als.*

(Supreme Judicial Court.)

8083 Eq.

Sep. 27, 1902. *Bill* alleging that plaintiff has to employ printing firms to print its publications; that in consequence of a dispute between the defendants and a firm employed by it, it was made the object of a sympathetic strike; threats of strike upon any printer that prints its publications. Asks injunctions against such threats or strikes upon such printers and upon one in particular.

Nov. 1, 1902. *Bill dismissed without prejudice.*

ESSEX COUNTY.

J. H. HORNE & SONS COMPANY *v.* JOHN T. BRADLEY *et als.*

2001 Eq.

Jun. 27, 1902. *Bill* substantially like that in *Walker* v. *Clark*. See *ante*, p. 99.

Jul. 11, 1902. *Temporary injunction* against acts complained of.

Sep. 3, 1902. *Answer* of defendants denying allegations of bill.

Jan. 18, 1907. *Case dismissed* because of plaintiff's failure to proceed with it.

BERRY *v.* DONOVAN.

Law.

Aug. 4, 1902. See decision of Supreme Judicial Court in this case, 188 Mass. 353, *ante,* p. 58.

WORCESTER COUNTY.

PRENTICE BROTHERS COMPANY *v.* WORCESTER LODGE (MACHINISTS).

543 Eq.

Jun. 30, 1902. *Bill* alleging strike, violence, intimidation, patrolling and picketing; coercion of customers, advertisements requesting machinists to keep away from Worcester, etc.

Jun. 30, 1902. *Temporary injunction* substantially like that in *Walker* v. *Clark.* See *ante,* p. 99.

1903.

SUFFOLK COUNTY.

AMERICAN TYPE FOUNDERS COMPANY *v.* INTERNATIONAL TYPOGRAPHICAL UNION.

(Supreme Judicial Court.)

8530 Eq.

Oct. 23, 1903. *Bill* alleging general strikes on plaintiff throughout the United States, written contracts with employees, threat of strike and strike in Boston, inducement of men under contract to quit, blacklisting by union of persisting employees, picketing, etc. Asks injunctions against inducing of men under contract to strike or to remain on strike, boycotting of plaintiff, and interference with employees or customers, etc.

Oct. 28, 1903. *Stipulation* (entered as interlocutory decree) that International Typographical Union will not interfere with employees or attempt to induce breaches of contract by employees having made such contracts; and will not picket plaintiff's place of business, etc.

THOMAS HENNEBERRY *v.* COACHMEN'S, ETC., UNION *et als.*

1320 Eq.

Apr. 6, 1903. *Bill.*

Mar. 6, 1906. *Bill dismissed* by agreement without costs.

ESSEX COUNTY.

WALTON & LOGAN COMPANY *v.* KNIGHTS OF LABOR No. 3662 *et als.*

2565 Eq.

Jan. 20, 1903. *Bill* substantially like that in *Walker* v. *Clark.* See *ante,* p. 99.

Jan. 23, 1903. *Referred to master* on question of temporary injunction.

Feb. 27, 1903. *Master's Report.* Strike on "stamp shops," patrolling and picketing, crowds of union sympathizers, violence and assaults.

Feb. 27, 1903. *Temporary injunction* against patrolling, obstructing, or interfering with plaintiff's employees, or intimidation of any character.

Apr. 8, 1903. *Answer* of defendants denying all allegations of bill.

Apr. 28, 1904. *Bill dismissed* without prejudice.

PATRICK J. HARNEY *et als. v.* KNIGHTS OF LABOR No. 3662.

2566 Eq.

This case grew out of the same situation and was identical with the last as to the proceedings taken.

May 1, 1903. *Petition for attachment for contempt.* See *post,* p. 148.

DANIEL A. DONOVAN *et al. v.* KNIGHTS OF LABOR No. 3662 *et als.*

2567 Eq.

This case also was identical with *Walton & Logan Co.* v. *Knights of Labor No. 3662.*

THOMAS CORCORAN *et als. v.* I. BOYNTON ARMSTRONG *et als.* (KNIGHTS OF LABOR No. 3662).

2568 Eq.

Jan. 20, 1903. *Bill* substantially like *Walker* v. *Clark*. See *ante*, p. 99.

Dec. 14, 1906. *Bill dismissed.*

The following cases were identical with *Corcoran* v. *Armstrong: George W. Herrick et als.* v. *I. Boynton Armstrong et als.*, 2569 Eq.; *George E. Nicholson Company* v. *I. Boynton Armstrong et als.*, 2570 Eq.; *Walter H. Tuttle* v. *I. Boynton Armstrong et als.*, 2571 Eq.; *Arthur E. Gloyd* v. *I. Boynton Armstrong et als.*, 2572 Eq.; *Henry S. Morse et als.* v. *I. Boynton Armstrong et als.*, 2573 Eq.; *Watson Shoe Company* v. *I. Boynton Armstrong et als.*, 2574 Eq.

BRIGGS CARRIAGE COMPANY *v.* LOCAL NO. 27 INTERNATIONAL CARRIAGE WORKERS, ETC., UNION.

2576 Eq

Jan. 27, 1903. *Bill* alleging strike of carriage makers in Amesbury; violence and threats of violence; inducement of boarding-house keepers to refuse to receive non-union employees, etc.

Jan. 31, 1903. *Stipulation* "that defendants will not use any violence or threats of violence, or in any manner use any force to coerce or intimidate any person from working; injunction to issue on proof of violation of terms of stipulation.

Mar. 5, 1903. *Answer of defendants* denying allegations of bill.

Sep. 21, 1903. *Bill dismissed* without further proceedings.

The following cases were identical with *Briggs Carriage Company* v. *Local No. 27*, above: *James H. Hassett et als.* v. *Local No. 27, etc.*, 2577 Eq.; *William H. Hume et als.* v. *Local No. 27, etc.*, 2578 Eq.; *George Walker et al.* v. *Local No. 27, etc.*, 2579 Eq.; *Samuel R. Bailey et al.* v. *Local No. 27, etc.*, 2580 Eq.; *Lambert Hollander* v. *Local No. 27, etc.*, 2581 Eq.; *Thomas C. Miller et al.* v. *Local No. 27, etc.*, 2582 Eq.; *Charles N. Dennett et al.* v. *Local No. 27, etc.*, 2583 Eq.; *James Neal et al.* v. *Local No. 27, etc.*, 2584 Eq.; *James Drummond* v. *Local No. 27, etc.*, 2585 Eq.; *Francis S. Merrill* v. *Local No. 27, etc.*, 2586 Eq.; *Biddle & Smart Co.* v. *Local No. 27, etc.*, 2587 Eq.

ARTHUR L. ORDWAY *v.* JOHN TOBIN *et als.*

2745 Eq.

Apr. 1, 1903. *Bill* asks injunction against alleged misuse of strike and benefit funds of union of which plaintiff was a member.

Dec. 14, 1906. *Bill dismissed.*

WORCESTER COUNTY.

FRANCIS A. MCCAULIFF *v.* FITCHBURG BRANCH GRANITE CUTTERS UNION.

928 Eq.

Apr. 28, 1903. *Bill* substantially like *Walker* v. *Clark*. See *ante*, p. 99.

Apr. 28, 1903. *Temporary injunction* (*ex parte*) against interference with, or intimidation of, workmen or customers or boycotting plaintiff or his workmen.

AMERICAN OPTICAL COMPANY *v.* METAL POLISHERS, ETC., UNION *et als.*

1527 Eq.

Nov. 17, 1903. *Bill* alleging conspiracy to prevent plaintiff's hiring non-union men, picketing, threats, violence, etc.

Nov. 18, 1903. *Temporary injunction* (*ex parte*) against acts complained of.

Jan. 6, 1904. *Answer* of defendants denying allegations of bill.

PLYMOUTH COUNTY.

W. SCOTT EDSON *v.* BROCKTON CENTRAL LABOR UNION *et als.*

5165 Eq.

Sep. 16, 1903. *Bill* alleging boycott of plaintiff, a tobacconist, for selling goods of manufacturers who had been declared "unfair" to union

labor. Asks injunction against picketing place of business, interference with prospective customers, etc.

Sep. 17, 1903. *Stipulation* that defendants will not remain near store for purpose of preventing customers trading and will not circulate cards or printed matter for that purpose.

Dec. 26, 1903. *Master's report* as to distribution of "We don't patronize" cards, etc.

Jun. 16, 1904. *Supplementary master's report* that no intention to continue the acts complained of appeared.

Jun. 24, 1904. *Decree denying injunction.*

Nov. 15, 1904. *Bill dismissed.*

1904.

SUFFOLK COUNTY.

United Typothetæ of America *v.* International Printing Pressmen's Union. C. M. Barrows Company *et als.* v. Martin P. Higgins *et als.*

8671 Eq.

Feb. 5, 1904. *Bill* alleging existence of working agreement providing that there should be no strike unless employer failed to live up to terms, and that disputes should be referred to a conference committee; sympathetic strike threatened and commenced. Asks injunction against maintaining strike unless after such reference, and order compelling unions and officers to do all things possible towards compelling the carrying out of the agreement, and forbidding the payment of strike benefits, etc., or doing anything to aid the strike in question.

Feb. 12, 1904. *Temporary injunction* against inducing any sympathetic strike or doing any acts to further or assist such a strike.

Mar. 1, 1904. *Supplementary bill* alleging intimidation of new and persisting employees, violence, persuasion, etc., and asking further injunctions.

(No further proceedings.)

Leroy K. McKown *et als. v.* William H. Frazier. (Atlantic Coast Seamen's Union.)

1945 Eq.

Feb. 23, 1904. *Bill* alleging that plaintiffs who own schooners had established a shipping office in charge of plaintiff McKown to ship all seamen; that defendants had induced crews to desert after shipping by promises of money; and by violence and other intimidation induced and compelled men not to go on board; assaults, etc.

Feb. 25, 1904. *Stipulation* that defendants will do none of the acts complained of for three weeks.

Feb. 29, 1904. *Temporary injunction* against interfering with plaintiff's business by violence, threats, or intimidation, and against any persuasion to break existing contracts.

Mar. 4, 1904. *Answer* denying allegations of bill.

Jun. 27, 1904. *Injunction made permanent.*

Jan. 12, 1905. *Petition for contempt against* one Allen. See *post,* p. 149.

Waldberg Brewing Company *v.* Edmond F. Ward *et als.*

2114 Eq.

May 6, 1904. *Bill* setting forth that plaintiff, a brewing corporation, had agreement with United Brewery Workmen, of which defendants were officers and members, under which defendants agreed that there should be no strike unless differences should be first submitted to arbitration; that some of plaintiff's officers were members of a partnership which was having a dispute with organized labor, but that there was no connection between that partnership and the plaintiff; that defendants threatened sympathetic strike on plaintiff to assist them in their dispute with the partnership and refused to arbitrate; that if a strike was called without warning,

$15,000 worth of beer in process of brewing would be ruined. Asks injunctions against calling or conducting such a strike or aiding it with strike benefits unless arbitration had been had as provided.

May 6, 1904. *Injunction ad interim* against striking unless after arbitration.

May 12, 1904. *Temporary injunction denied* after hearing and *ad interim injunction dissolved.*

EDWARD C. BECK *v.* JOHN T. CASHMAN *et als.*

2237 Eq.

Jun. 17, 1904. *Bill* alleging a "closed shop" strike. Asks injunction against persisting in strikes on "Kimball Building," on which plaintiff was working.

(No injunction ever issued. No further proceedings.)

WORCESTER COUNTY.

WHITCOMB FOUNDRY COMPANY *v.* IRON MOULDERS UNION *et als.*

2412 Eq.

Nov. 7, 1904. *Bill* containing usual allegations of a strike, picketing, patrolling, threats, epithets, and other interference with employees and customers, and asking injunctions.

Nov. 7, 1904. *Temporary injunction* (*ex parte*) against acts complained of.

Mar. 9, 1905. *Amended bill* striking out unions as defendants and substituting names of individuals.

Mar. 20, 1905. *Temporary injunction* in terms of old upon new bill.

Jun. 14, 1905. *Temporary injunction dissolved* pending appeals to Supreme Judicial Court.

Feb. 5, 1906. *Demurrers sustained.*

Nov. 6, 1906. *Waiver of appeal* by plaintiff.

Nov. 19, 1906. *Bill dismissed* without costs.

The following cases were identical with *Whitcomb Foundry Co.* v. *Iron Moulders Union: James A. Colvin* v. *Iron Moulders Union, E. B. Pierce* v. *Iron Moulders Union,* and *Reed Foundry Co.* v. *Iron Moulders Union.*

HAMPDEN COUNTY.

HOLYOKE MACHINE COMPANY *v.* WILLIAM J. PRENDERGAST *et als.*

1974 Eq.

Jun. 13, 1904. *Bill* alleging sympathetic strike provoked by ordering men to work on goods intended for a branch factory upon which a strike was in progress; usual allegations of picketing, intimidation, etc.

Aug. 5, 1904. *Temporary injunction* against picketing, molestation of employees or customers, etc.

Aug. 8, 1904. *Master's report* sustaining allegations of bill.

Dec. 1, 1904. *Final decree of permanent injunction.*

1905.

SUFFOLK COUNTY.

NORCROSS BROTHERS *v.* BRICKLAYERS UNION No. 3.

(Supreme Judicial Court.)

9634 Eq.

Oct. 10, 1905. *Bill* alleging use of labor saving machine and consequent strikes and threats of strike, direct and sympathetic. Asks injunctions against calling, conducting, or doing anything to assist such strikes.

Oct. 17, 1905. *Answer* of defendants denying allegations of bill.

Nov. 8, 1905. *Temporary injunction* against calling a strike for the purpose of compelling plaintiff to give up the use of the labor-saving device in question; against continuing any strike order already in force; and against interfering with plaintiff's business or employees by force or threats of intimidation.

Dec. 7, 1905. *Final decree of permanent injunction* in terms of temporary injunction. (Memorandum of decision.)

May 24, 1909. *Final decree.*

Joseph C. Pickett *et als. v.* Bricklayers Union No. 3 *et als.*

(Supreme Judicial Court.)

9633 Eq.

Oct. 10, 1905. *Bill* alleging that plaintiffs were "stone pointers" and that Joseph Pickett had contract with the L. D. Willcutt & Son Company to do the pointing on a certain building; that defendants had conspired to drive them out of business, and to that end had threatened the L. D. Willcutt Company with a strike if it did not break contract with the plaintiffs and refuse further to employ them; and that the L. D. Willcutt & Son Company now threatened to break said contract. Asks injunction against such interference.

Oct. 17, 1905. *Answer* of defendants.

Oct. 30, 1905. *Memorandum of decision* by Justice Morton.

Nov. 8, 1905. *Temporary injunction* as prayed for.

Dec. 11, 1905. *Final decree of permanent injunction.*

Jan. 1, 1909. *Final decree dismissing appeal* from above decree.[1]

Robert H. Pickett *et als. v.* Bricklayers Union *et als.* (Walsh.)

3424 Eq.

Nov. 21, 1905. *Bill.* (See below.)

Nov. 21, 1905. *Injunction ad interim.*

Nov. 24, 1905. *Ad interim injunction continued as temporary injunction.*

Dec. 11, 1905. *Final decree of permanent injunction.*

Dec. 15, 1906. *Final decree* (as amended after rescript from the Supreme Judicial Court).

This case and the previous one grew out of the dispute between the organized bricklayers and stone masons of Boston and vicinity. For a statement of the facts see the opinion of the Supreme Judicial Court in this case, *Pickett* v. *Walsh,* 192 Mass. 572, *ante,* p. 63.

Woodbury & Leighton Company *v.* Bricklayers Union No. 3 *et als.*

3465 Eq.

Dec. 12, 1905. *Bill* alleging strikes, direct and sympathetic, to compel payment of wages on each Saturday for the week's work, and asking injunctions against calling or persisting in such strikes.

Dec. 20, 1905. *Bill dismissed* without prejudice and without costs.

Rheinhardt E. Bartels *et al. v.* Knights of Labor No. 1552 *et als.*

3479 Eq.

Dec. 20, 1905. *Bill* alleging a strike against maintaining in plaintiff's factory a training school for shoe cutters; usual allegations of picketing, threats, assaults, etc.; advertisement requesting cutters to keep away from factory.

Dec. 20, 1905. *Temporary injunction issued* after hearing.

NORFOLK COUNTY.

Alexander S. Whiting *v.* Boot and Shoe Workers Union.

3987 Law.

Sep. 12, 1905. *Declaration* (action at law) alleging that plaintiff could not get employment without belonging to defendant union, and that the defendant was unwilling to admit him except on payment of a prohibitive initiation fee.

Apr. 23, 1906. *Answer* of individual defendants.

PLYMOUTH COUNTY.

Benjamin S. Atwood *v.* Brockton Central Labor Union *et als.*

6101 Eq.

Nov. 2, 1905. *Bill* alleging boycott of plaintiff, coercion of customers not to trade with plaintiff, and boycott of customers. Asks injunctions

[1] See *Pickett* v. *Walsh,* 192 Mass. 572, *ante,* p. 63.

against any acts in furtherance of the boycotts.

Dec. 21, 1905. *Answer* of defendants admitting that plaintiff had been placed on "unfair list;" setting up that plaintiff is member of Boxmakers' Association whose purpose is hostility to and extinction of unions; and stating organization of American Federation of Labor.

May 16, 1906. *Master's report* describing course of dispute; placing on unfair list; conduct of boycott; threats to and boycott of customers; advertising of "We don't patronize" lists, etc.

Jul. 31, 1906. *Decree of permanent injunction* against the members of the union, but not against the union itself, restraining intimidation of employees, persuading breaches of contract, "or in any way interfering with the conduct of business by the plaintiff as now carried on by him; from threatening customers with strikes or boycotts or by boycotting them or plaintiff or publishing the plaintiff as unfair."

1906.

SUFFOLK COUNTY.

ABERTHAW CONSTRUCTION COMPANY *v.* C. W. CAMERON *et als.*

997 Eq.

Feb. 23, 1906. *Bill.*

See decision of Supreme Judicial Court in this case, 194 Mass. 208, *ante*, p. 74.

THE ANDREWS WASGATT COMPANY *v.* KNIGHTS OF LABOR NO. 1552.

3620 Eq.

Feb. 16, 1906. *Bill* alleging demand of union for reinstatement of discharged workmen. Bill substantially similar to *Walker* v. *Clark*. See *ante*, p. 99.

Feb. 27, 1906. *Temporary injunction* against picketing, etc., substantially like that in *Walker* v. *Clark*. See *ante*, p. 99.

NAPIER MOTOR COMPANY *v.* INTERNATIONAL ASSOCIATION OF MACHINISTS.

3645 Eq.

Mar. 1, 1906. *Bill* alleging "open shop" strike. Usual allegations of picketing, etc.

Mar. 1, 1906. *Ad interim injunction.*

Mar. 13, 1906. *Temporary injunction* against acts complained of and any sort of intimidation of employees or customers.

Apr. 30, 1906. *Answer* of defendants.

MUSICIANS PROTECTIVE UNION *v.* EDWIN A. FRANKLIN *et als.*

3679 Eq.

Mar. 15, 1906. *Bill* setting forth that defendants, by threats of boycott and by representing that plaintiffs are "non-union," are attempting to prevent their employment and in particular with reference to a contract to appear in the parade of the Ancient Order of Hibernians on March 17, 1906. Asks injunctions.

Mar. 16, 1906. *Stipulation* that defendants will not intimidate any persons from employing members of plaintiff corporation or interfere with contract with Ancient Order of Hibernians.

Jun. 4, 1906. *Answer* of defendants.

SAMPSON & MURDOCK COMPANY *v.* BOSTON TYPOGRAPHICAL UNION *et als.*

3736 Eq.

Apr. 7, 1906. *Bill* alleging strike and attempt to prevent customers purchasing "Boston City Directory" by publication of circular describing plaintiff's publication as "unfair," inaccurate, etc. Asks injunction against circulating same and against "by any scheme or design . . . endeavoring to deprive plaintiff of customers or to injure its business."

April 13, 1906. *Temporary injunction* forbidding the circulation of the circular in question or any other

printed matter designed to deprive the plaintiff of customers or to prevent any person desirous of entering business relations with the plaintiff from so doing.

The Sparrell Print *v.* Boston Typographical Union *et als.*

3744 Eq.

Apr. 10, 1906. *Bill* alleging *inter alia* the circulation of post cards, circulars, and other printed matter containing "highly scurrilous, abusive, and offensive language and epithets" with the design of intimidating complainants' employees from remaining in employment. Asks injunctions.

May 4, 1906. *Temporary injunction* restraining an individual defendant from publishing or circulating printed matter of the kind in question or "by any scheme or design with others organized for the purpose" annoying, intimidating, etc., persons in plaintiff's employ.

Boston Herald Company *v.* Dennis Driscoll *et als.*

3777 Eq.

Apr. 28, 1906. *Bill.* For the proceedings in this case, see *ante,* p. 109.

Perkins Woodworking Company *v.* W. D. McIntosh *et als.* (Amalgamated Woodworkers of America.)

3795 Eq.

May 8, 1906. *Bill* alleging strike to compel discharge of non-union men; persuasion of customers to break existing contracts; coercion of customers by sympathetic strikes and threats of strikes; intimidation of employees. Asks injunctions against acts complained of.

May 11, 1906. *Temporary injunction* against intimidation of employees or interference with customers.

May 17, 1906. *Petition for attachment for contempt.* See *post,* p. 149.

May 17, 1906. *Answer* of defendants.

Jun. 8, 1906. *Permanent injunction* against the individual defendants and the officers and members of Carpenters District Council of Boston in the terms of the temporary injunction.

Robert Casson *et als. v.* Amalgamated Woodworkers of America.

3847 Eq.

May 31, 1906. *Bill* substantially like that in the previous case (*Perkins Woodworking Company* v. *W. D. McIntosh*).

Jun. 5, 1906. *Temporary injunction* against interference with present, future, or prospective employees or customers.

Oct. 8, 1906. *Petition for attachment for contempt.* For proceedings under this petition, see *Casson* v. *McIntosh,* 199 Mass. 443, *ante,* p. 86.

Jacob Lewitzky *et als.* v. Independent Rag Workers of Massachusetts *et als.*

3886 Eq.

Jun. 20, 1906. *Bill* alleging strike, picketing, patrolling, etc. Asks usual injunctions.

Jun. 21, 1906. *Temporary injunction* substantially like that in *Walker* v. *Clark.* See *ante,* p. 99.

Jun. 25, 1906. *Answer* of defendants.

Jun. 26, 1906. *Cross-bill* setting up that plaintiff is member of a combination not to employ members of defendant association under penalty of fines and forfeitures; blacklisting, threats, etc. Asks injunctions.

Jun. 27, 1906. *Reference to master.*

Jul. 16, 1906. *Petition for attachment for contempt* in violation of injunction.

Jul. 31, 1906. *Master's report.* "All differences settled."

Mar. 25, 1909. *Bill dismissed* without costs.

L. D. Willcutt & Sons Company *v.* Bricklayers Union *et als.* (Driscoll.)

3955 Eq.

Jul. 19, 1906. *Bill.* See decision of the Supreme Judicial Court in this case, 200 Mass. 110, *ante,* p. 87.

Waltham Bleachery and Dye Works Company *v.* James Hart *et als.*

3965 Eq.

Jul. 23, 1906. *Bill* alleging strike, picketing, intercepting of employees, intimidation, assaults and epithets; coercion of customers; boycotts of employees. Asks injunctions.

Jul. 23, 1906. *Temporary injunction* against acts complained of.

Nov. 9, 1906. *Bill dismissed by consent.*

Walter S. Butler *v.* George Lever *et als.*

4039 Eq.

Aug. 29, 1906. *Bill* alleging closed-shop strike. Substantially similar in other allegations to *Walker* v. *Clark.* See *ante,* p. 99.

Aug. 29, 1906. *Ad interim injunction.*

Sep. 4, 1906. *Temporary injunction* against certain named defendants forbidding patrolling, obstruction, or intimidation of employees and interference with customers.

Nov. 22, 1906. *Answer* of defendants.

W. S. Best Printing Company *v.* Boston Typographical Union *et als.*

4082 Eq.

Sep. 19, 1906. *Bill* substantially like *Walker* v. *Clark.* See *ante,* p. 99.

Lincoln A. Clough *v.* Colin W. Cameron *et als.*

4111 Eq.

Oct. 1, 1906. *Bill* alleging that the plaintiff, a carpenter, did not belong to any union and that defendants seeking to injure him were persuading employers not to hire him and threatening them with strikes if they did so. Asks injunction against further interference by annoying, threatening, or intimidating the plaintiff or his employers.

Oct. 31, 1906. *Injunction denied after hearing.* In denying the injunction the court said: "The acts of the defendant in causing plaintiff's discharge from the employment of G. W. Cutting & Co. because he refused to join their union must be considered unlawful under the decision in *Plant* v. *Woods,* 176 Mass. 492. (See p. 44.) In that case, however, the court said: 'As the plaintiff had been injured by these acts, and there is reason to believe the defendants contemplated further proceedings of the same kind which would be likely still more to injure the plaintiff, a bill in equity lies to enjoin the defendants.' In the case at bar the element of continual persecution is wholly lacking. The plaintiff immediately after his discharge obtained other employment at the same rate of wages and has not been molested by the defendants in his new employment."

Gibbey Foundry Company *v.* Iron and Brass Moulders Union *et als.*

4116 Eq.

Oct. 3, 1906. *Bill* substantially like *Walker* v. *Clark.* See *ante,* p. 99.

Oct. 31, 1906. *Memorandum of decision* (Fox, *J.*) ordering name of unions to be struck out and bill treated as against individual defendants. Demurrer to bill as so regarded overruled.

Archibald T. Sampson *v.* John J. McLaughlin *et als.*

4251 Eq.

Nov. 26, 1906. *Bill* alleging intimidation of workmen and of customers and asking injunctions against interference with workmen or customers

and against customers breaking a contract.

(Nothing further was done in this case.)

United Garment Workers of America *v.* Simon Vorenberg.

4256 Eq.

Nov. 26, 1906. *Bill* alleging that defendant had removed the union label from union-made goods and had affixed the label to inferior "non-union" goods. Asks injunctions against such acts, an accounting, and damages.

Dec. 3, 1906. *Stipulation* by defendant who denies that he has done the acts complained of, but agrees that he will not do them.

Dec. 19, 1906. *Final decree by consent* of *permanent injunction* against the acts in question.

James E. Keough *et al. v.* John W. Barton *et als.*

4287 Eq.

Dec. 10, 1906. *Bill* alleging that plaintiff had contract to do electrical work on Quincy high school; that owing to a dispute between plaintiff and defendants over employment of non-union men, defendants had threatened city officials with general strike on the building unless they forced plaintiff to yield, or, failing, cancelled contract with him; that plaintiff had been declared "unfair," and that the city officials have threatened to break their contract with him. Asks injunctions against maintaining the strike in question, persuading or intimidating the city officials into breaking contract, and restraining said officials from breaking the contract.

Dec. 15, 1906. *Temporary injunction* against interference with or coercion of those having contracts or disposed to enter into contracts with plaintiff; against inducing or threatening sympathetic strikes or breach of existing contracts.

May 27, 1908. *Master's report.*

ESSEX COUNTY.

Edward T. Reynolds *et als. v.* George H. E. Reynolds *et als.*

116 Eq.

May 15, 1906. *Bill.*

May 21, 1906. *Temporary injunction.* For a statement of the question involved and of the further proceedings see the decision of the Supreme Judicial Court in this case, *Reynolds* v. *Davis,* 198 Mass. 294, *ante,* p. 82.

Nov. 27, 1906. *Petition for attachment for contempt.* See *post,* p. 149.

W. J. Young Machine Company *v.* Machinists Union No. 471 *et als.*

117 Eq.

May 17, 1906. *Bill* substantially like that in *Walker* v. *Clark.* See *ante,* p. 99.

May 22, 1906. *Temporary injunction* substantially like that in *Walker* v. *Clark.* See *ante,* p. 99.

Jan. 26, 1907. *Answer of defendants* denying allegations of bill.

Jun. 21, 1907. *Master's report* setting forth facts as to strike resulting from refusal of working agreement, gathering of crowds, interference with and intimidation of employees, etc.

Oct. 18, 1907. *Permanent injunction* against interfering with plaintiff's business by intimidating present or future or prospective employees or persons desiring to do business with the plaintiff, or entering conspiracy so to do.

Essex Machine Company *v.* Machinists Union *et als.*

118 Eq.

May 18, 1906. *Bill* substantially like that in *Walker* v. *Clark.* See *ante,* p. 99.

May 22, 1906. *Temporary injunction* substantially like that in previous case.

Jun. 20, 1906. *Petition for attachment for contempt.* See *post,* p. 149.

Jun. 21, 1907. *Master's report* identical with that in previous case.

Oct. 18, 1907. *Permanent injunction* as in previous case.

BOSTON MACHINE WORKS COMPANY *et als. v.* MACHINISTS UNION *et al.*
144 Eq.

Jul. 21, 1906. *Bill* substantially like that in *Walker* v. *Clark.* See *ante,* p. 99.

Jul. 27, 1906. *Temporary injunction* by consent like those in two previous cases.

Aug. 13, 1906. *Answer* of defendants denying all allegations and setting forth vote of union not to picket plaintiff's factory.

Nov. 26, 1906. *Cross-bill* (as amended) alleging conspiracy of plaintiffs to ruin union; threats and coercion to prevent persons joining unions; existence of "employers' association" of which plaintiffs are members; blacklisting, bringing of injunction suits to intimidate union men, etc.

Jan. 14, 1907. *Cross-bill dismissed on demurrer.*

Jun. 21, 1907. *Master's report* identical with that in two previous cases.

Oct. 18, 1907. *Permanent injunction* as in two previous cases.

ANDREAS RAU *v.* ROBERT F. PETZOLD *et als.*
6053 Law.

Oct. 1, 1906. *Declaration* (in action at law) against the officers and members of the United Brewery Workmen alleging that defendants persuaded him to take a job in a brewery under promise that they would admit him to the union; that they refused to admit him to union and procured his discharge from employment by threat of strike.

Oct. 31, 1906. *Answer* of defendants denying all allegations of declaration.

STEPHEN J. CONNOLLY *et als.* v. STONEMASONS UNION *et als.*
163 Eq.

Oct. 23, 1906. *Bill* alleging that plaintiffs had contract with one Whitcomb and had no dispute with their workmen; that they were threatened with a sympathetic strike to compel them to put pressure on Whitcomb to compel him to yield to defendants in a dispute which defendants were having with him. Asks injunction.

Oct. 23, 1906. *Ad interim injunction* as prayed.

Oct. 30, 1906. *Case settled by agreement.*

NORFOLK COUNTY.

J. STEARNS CUSHING *v.* NORWOOD TYPOGRAPHICAL UNION.
4220 Eq.

Feb. 7, 1906. *Bill* alleging picketing, congregating about place of business, bad language, etc., in course of strike.

Feb. 12, 1906. *Findings by the court* as to "lining up" along sidewalks over which persisting employees had to pass to and from work, cat-calls, cries of "scab," etc., intended to annoy and intimidate workmen. The court found that there was no picketing by defendants, who, however, are held to be responsible for the acts done, although these were partly done by sympathizers.

Feb. 12, 1906. *Temporary injunction* against intimidation or attempting to intimidate employees, use of annoying or threatening language, etc.

Apr. 4, 1906. *Answer* of defendants.

Dec. 7, 1908. *Case dismissed* at call of docket.

J. Stearns Cushing *v.* International Typographical Union *et als.*

4268 Eq.

Mar. 17, 1906. *Bill* alleging that in the course of the same strike as that in previous case the International and the Boston Typographical Unions had joined forces with the Norwood Union and were picketing plaintiff's place of business and the railroad stations; intimidating and persuading, by payments and otherwise, persons not to go to work for plaintiff; posting placards relating to the strike; using abusive language and threats, etc.

Mar. 21, 1906. *Temporary injunction* restraining the persons named personally, or by their agents or servants, interfering in plaintiff's business by doing the acts complained of.

Dec. 7, 1908. *Case dismissed* at call of docket.

Cochrane Manufacturing Company *v.* Tapestry Weavers Union *et als.*

4393 Eq.

Jun. 13, 1906. *Bill* (as amended) substantially like that in *Walker* v. *Clark*. See *ante*, p. 99.

Jun. 20, 1906. *Reference to master on question of temporary injunction.*

Jun. 26, 1906. *Master's report* sustaining allegations of bill as to crowding, intimidating language, etc. Finds no real violence to have been committed.

Jul. 2, 1906. *Temporary injunction* forbidding intimidation of any description of persons employed by or seeking to be employed by the plaintiff.

This injunction was in part as follows: "This injunction shall be in force and binding on the respondents named in the bill . . . and on the individual members of Tapestry Weavers Union No. 529 and after the service upon them severally of the writ of injunction . . . and shall be binding upon all other persons whatsoever aiding and abetting in doing the acts herein forbidden from and after the time when such persons shall severally have knowledge of this order and the existence of this injunction."

Jul. 10, 1906. *Petition for attachment for contempt* in violating the injunction.

Dec. 7, 1908. *Case dismissed* at call of docket.

HAMPDEN COUNTY.

J. Stevens Arms & Tool Company *v.* John H. Gilmartin *et als.*

3116 Eq.

Apr. 27, 1906. *Bill* containing usual allegations as to picketing, patrolling, threatening and abusive language and epithets, placards ("Stevens rifles polished by scabs"), annoyance of customers, etc. Asks customary injunctions.

Apr. 27, 1906. *Temporary injunction* (*ex parte*). See *ante*, p. 127.

May 25, 1906. *Answer* of defendants denying allegations of bill.

Jan. 23, 1907. *Master's report* stating facts as to strike, pickets, intimidation by following, etc., placing on "unfair list" by Central Labor Union and International Union; occasional threats of violence, but not shown to be more than individual action.

Jul. 22, 1907. *Final decree. Permanent injunction* forbidding picketing, molestation of employees, posting of offensive stickers or placards, persuading breaches of existing contract, boycotting, etc.

1907.

SUFFOLK COUNTY.

John H. Gleason *v.* Edward W. Gordon *et als.*

4505 Eq.

Mar. 14, 1907. *Bill* alleging wrongful exclusion from Webb Pressmen's Union and causing his discharge. Asks order that he be reinstated, and damages.

Mar. 30, 1908. *Answer* of defendants denying allegations of bill and setting up that plaintiff was not entitled to membership in the union in question.

DAVID H. GLICKMAN *et al. v.* INTERNATIONAL LADIES GARMENT WORKERS UNION *et als.*

4537 Eq.

Mar. 22, 1907. *Bill* alleging sympathetic strike on plaintiffs. Asks injunction against any interference with his employees.

Mar. 26, 1907. *Stipulation* to refrain from acts in question until further order of court.

Apr. 13, 1907. *Answer* of individual defendants denying persuasion of plaintiffs' employees to strike and setting up that plaintiffs are members of "Boston Garment Manufacturers Protective Association" organized for purposes of hostility to unions, blacklisting, etc.

ISADORE MOSS *et als. v.* UNITED GARMENT WORKERS OF AMERICA *et als.*

4571 Eq.

Apr. 3, 1907. *Bill* alleging strike resulting from refusal of "closed shop" agreement; usual allegations of picketing, patrolling of streets, intercepting and intimidation of employees, persuasion to break existing contracts, etc.

Apr. 5, 1907. *Temporary injunction* against acts complained of.

Apr. 9, 1907. *Answer* of defendants denying allegations of bill and setting up that plaintiffs are members of a "manufacturers' association" formed for purposes of hostility to unions, blacklisting, etc.

Apr. 22, 1907. *Petition for attachment for contempt* against certain named defendants. See *post*, p. 149.

ERNEST AUERBACH *et als. v.* UNITED GARMENT WORKERS OF AMERICA *et als.*

4572 Eq.

Apr. 3, 1907. *Bill* substantially like that in previous case (*Moss* v. *United Garment Workers*).

Apr. 5, 1907. *Temporary injunction* issued by consent.

Apr. 9, 1907. *Answer* of defendants denying allegations of bill.

Apr. 18, 1907. *Petition for attachment for contempt* against certain defendants alleging violation of injunction. See *post*, p. 149.

UNITED GARMENT WORKERS OF AMERICA *v.* NATHAN WAXMAN.

4590 Eq.

April 11, 1907. *Bill* alleging that defendant has removed the plaintiff's registered label from union-made goods and has attached it without authority to "non-union" goods.

Apr. 15, 1907. *Temporary injunction* against acts alleged issued without objection.

May 20, 1907. *Permanent injunction* against acts alleged entered by consent.

The following cases were identical with *United Garment Workers of America* v. *Waxman: United Garment Workers of America* v. *Aaron Brown*, 4952 Eq.; *United Garment Workers of America* v. *Benjamin J. Bennett*, 4591 Eq.

CHARLES H. BELLEDEU *v.* COLIN W. CAMERON *et als.*

4620 Eq.

Apr. 23, 1907. *Bill* alleging threat of strike to compel plaintiff to discharge non-union men and consequent interference with plaintiff in performing work under contract with Commonwealth which had to be finished by a certain day. Asks injunctions.

Apr. 25, 1907. *Stipulation* by two of individual defendants not to do any

of the acts complained of, directly or indirectly, pending hearing.

(No further proceedings.)

AUBREY HILLIARD *v.* DANIEL J. TOBIN *et als.*

(Supreme Judicial Court.)

11171 Eq.

Apr. 8, 1907. *Bill* alleging strike, picketing, patrolling, intimidating and abusive language, epithets, and threats; hostile demonstrations directed at plaintiff's teams and at boarding places of employees; assaults upon and injuries to teams, goods, and drivers; pressure upon and annoyance of customers; threats of sympathetic strikes, etc. Asks general injunctions.

May 9, 1907. *Temporary injunction,* after hearing, restraining assaults, intimidation, and other acts complained of, including inducement to break existing contracts.

Jun. 4, 1907. *Petition for attachment for contempt.* See *post,* p. 150.

Nov. 7, 1907. *Master's report* setting forth that, as strike had been declared off, he deemed further proceedings inadvisable.

Dec. 20, 1907. *Final decree,* by consent, of permanent injunction against inciting or participating in assaulting or otherwise intimidating plaintiff's employees.

F. KNIGHT & SON CORPORATION *v.* DANIEL J. TOBIN *et als.*

(Supreme Judicial Court.)

11179 Eq.

May 9, 1907. *Bill* substantially like that in the above case. (*Hilliard* v. *Tobin.*)

May 9, 1907. *Temporary injunction* as in previous case.

Jun. 27, 1907. *Petition for attachment for contempt.* See *post,* p. 150.

Nov. 7, 1907. *Master's report.*

Dec. 20, 1907. *Final decree* as in previous case.

The following cases were identical with *Hilliard* v. *Tobin: E. G. Tutein Company* v. *Daniel J. Tobin,* 11180 Eq.; *Boston Forwarding Company* v. *Daniel J. Tobin,* 11181 Eq.; *Lewis Flanders Company* v. *Daniel J. Tobin,* 11182 Eq.; *H. W. Annable* v. *Daniel J. Tobin,* 11183 Eq.; *G. P. Pote* v. *Daniel J. Tobin,* 11184 Eq.; *Edgar J. Delano* v. *Daniel J. Tobin,* 11185 Eq.; *W. H. Morse* v. *Daniel J. Tobin,* 11186 Eq.

GEORGE B. HUGO *v.* ARTHUR M. HUDDELL *et als.*

4720 Eq.

May 27, 1907. *Bill* alleging that the defendants are conducting a boycott against the plaintiff who carries on an "open shop;" circulation of printed matter describing plaintiff as "unfair," etc. Asks injunctions against inducing third persons to break contracts with plaintiff or not to deal with him; against declaring plaintiff unfair or circulating the printed matter in question or joining any scheme to deprive plaintiff of customers or to injure him in his business.

Jun. 22, 1907. *Answer* of defendants denying allegations of bill and setting up existence of an "employers' association" and plaintiff's connection therewith.

MARTIN SKATE COMPANY *v.* JOHN WHITE *et als.*

4795 Eq.

Jun. 21, 1907. *Bill* substantially like that in *Walker* v. *Clark.* See *ante,* p. 99.

Jun. 25, 1907. *Stipulation* by all the defendants, including all the members of the local union of the International Metal Polishers Union, that they will not do any of the acts complained of until the further order of the court.

AARON F. SMITH COMPANY *v.* JOHN DELANEY *et als.*

4932 Eq.

Aug. 20, 1907. *Bill* alleging strike on plaintiff's shoe factory, picketing, intimidation, boycott of strike breakers; intimidating publications in Armenian newspapers; handbills urging ostracism of employees, etc. Asks injunctions.

Aug. 22, 1907. *Stipulation* by defendants not to do the acts complained of.

Aug. 22, 1907. *Hearing on question of injunction indefinitely continued.*

E. B. BADGER & SONS COMPANY *v.* JOHN P. KENNEDY *et als.*

4977 Eq.

Sep. 16, 1907. *Bill* alleging strike for "closed shop." Injunctions asked against interference with or coercion of customers, declaring plaintiff "unfair," etc.

Jan. 6, 1908. *Answer* of defendants denying allegations of bill.

EDWARD P. COX *v.* JOHN W. BARTON *et als.*

5066 Eq.

Oct. 30, 1907. *Bill* alleging strike for "closed shop," picketing, etc., and of pressure on persons with whom plaintiff has contracts to cancel same, etc.; threats of sympathetic strike. Asks injunctions.

Feb. 14, 1908. *Answer* of defendants denying allegations of bill and setting up plaintiff's membership in an "employers association" formed for purpose of hostility to unions, etc.

ESSEX COUNTY.

JOHNSON L. WALKER *et al. v.* ALEXANDER S. CLARK *et als.*

212 Eq.

See *ante*, p. 99.

IPSWICH MILLS *v.* CHARLES ANDROS *et als.*

(Supreme Judicial Court.)

1139 Eq.

Jun. 26, 1907. *Bill* substantially like that in *Walker* v. *Clark*. See *ante*, p. 99.

(No further proceedings.)

AUGUSTUS HENNESSEY *v.* JOHN DELANEY *et als.*

232 Eq.

Aug. 6, 1907. *Bill* substantially like that in *Walker* v. *Clark*. See *ante*, p. 99.

Aug. 8, 1907. *Stipulation* that defendants would cease picketing and all forms of interference with plaintiff's workmen or those desiring to become such.

EMERSON MANUFACTURING COMPANY *v.* JAMES BENSON *et als.*

246 Eq.

Sep. 9, 1907. *Bill* substantially like that in *Walker* v. *Clark*. See *ante*, p. 99.

Sep. 11, 1907. *Stipulation* that picketing in any form should cease and not be resumed.

MIDDLESEX COUNTY.

M. FRANK LUCAS *et als. v.* MARTIN L. CHIVERS *et als.*

1627 Eq.

May 25, 1907. *Bill* substantially like that in *Walker* v. *Clark*. See *ante*, p. 99.

Jun. 5, 1907. *Temporary injunction* against acts complained of.

Oct. 6, 1908. *Stipulation* that defendants would not do the acts complained of.

F. PARKER BURNHAM *v.* MARTIN D. CHIVERS *et als.*

1633 Eq.

Jun. 6, 1907. *Bill* substantially like that in *Walker* v. *Clark*. See *ante*, p. 99.

Jun. 11, 1907. *Temporary injunction* against acts complained of.

Oct. 6, 1908. *Stipulation* by defendants that they would not do the acts complained of.

PLYMOUTH COUNTY.

James Claflin *v.* William P. Mackey *et als.*

7030 Eq.

Dec. 3, 1907. *Bill* alleging refusal of plaintiff, a barber, to raise his prices to union rates and resulting interference with customers, boycott, publication of shop as unfair, picketing of shop, etc.

Dec. 11, 1907. *Stipulation by defendants* that they will not do the acts complained of.

Mar. 13, 1908. *Permanent injunction* by consent forbidding the acts complained of.

NORFOLK COUNTY.

Fore River Shipbuilding Company *v.* M. G. Lord *et als.*

4968 Eq.

Aug. 2, 1907. *Bill* substantially like that in *Walker* v. *Clark*. See *ante*, p. 99.

Aug. 12, 1907. *Stipulation* by defendants that they will not molest or intimidate workmen or congregate near factory, provided "that it shall not be considered a breach of these stipulations for the defendants peaceably, without intimidation or threats, expressed or implied, and not obtruding beyond the point where the other person is willing to listen, to advise any person that they may have reason to believe about to seek employment . . . in the plaintiff's business that there is a strike of the workmen, provided that not more than one of the defendants shall be in any one street or public place for that purpose at the same time and in no event . . . nearer the plaintiff's place of business" than certain points named.

Aug. 12, 1907. *Case indefinitely continued* by order of court upon the filing of the above stipulation.

HAMPDEN COUNTY.

National Blank Book Company *v.* Max Hoffman *et als.*

3971 Eq.

Jul. 1, 1907. *Bill* substantially like that in *Walker* v. *Clark*. See *ante*, p. 99.

Jul. 1, 1907. *Temporary injunction* (*ex parte*)[1] forbidding acts complained of "or in any way interfering with the conduct of plaintiff's business as at present carried on by it."

Jul. 16, 1907. *Temporary injunction modified* by striking out the clause quoted above.

Sep. 6, 1907. *Petition for attachment for contempt* against a certain defendant.

Oct. 4, 1907. *Second petition* against this defendant and *petition against another defendant*.

(No further proceedings ever taken.)

1908.

SUFFOLK COUNTY.

Morris Barrish *v.* Thomas J. Mulkern *et als.*

5361 Eq.

Mar. 2, 1908. *Bill* alleging unwarranted expulsion from Newsboys' Protective Union; representation of plaintiff as a "scab" and "traitor." Asks injunctions and damages.

Mar. 16, 1908. *Motion for specifications.*

Edward F. Cox *v.* Colin W. Cameron *et als.*

5909 Eq.

Oct. 14, 1908. *Bill* alleging that plaintiff had a contract with the Boston

[1] See definition on p. 129.

City Club; that defendants other than the City Club conspired to injure plaintiff by causing persons having contracts with plaintiff to break them; that the Boston City Club became party to conspiracy by threatening under coercion of a threatened sympathetic strike to break its contract with plaintiff and did break it. Asks injunctions.

Oct. 22, 1908. *Answer of Boston City Club* denying conspiracy or breach of contract.

Dec. 16, 1908. *Pleas* and *answers* of other defendants.

WOODBURY & LEIGHTON COMPANY *v.* EDWARD J. MCGIVERN *et als.*

(Supreme Judicial Court.)

13054 Eq.

Oct. 20, 1908. *Bill.*

For the proceedings in this case, see *ante,* p. 115.

WALTON & LOGAN COMPANY *v.* BENJAMIN BAKER.

13093 Eq.

Nov. 25, 1908. *Bill* alleging sympathetic strike in factory in Chelsea growing out of strike against use of labor-saving lasting device by another manufacturer in Lynn; picketing of factory, parades of strikers and sympathizers near factory, threats, jeering, violence, assaults, etc. Asks usual injunctions.

Nov. 28, 1908. *Temporary injunction* against intimidation of employees by violence, threats, picketing, processions, pressure upon persons boarding employees, etc.

ESSEX COUNTY.

CHAUNCEY W. DODGE *et als. v.* JOHN WHITNEY *et als.*

420 Eq.

Dec. 8, 1908. *Bill* by two shoe firms substantially similar to that in *Walker* v. *Clark.* See *ante,* p. 99.

Dec. 14, 1908. *Answer* of defendants denying allegations of bill.

Dec. 21, 1908. *Temporary injunction,* substantially like that in *Walker* v. *Clark.* See *ante,* p. 99.

V.

CASES OF CONTEMPT OF COURT.

The filing of petitions for contempt of court has been noted under the cases in which they arose. There follows the complete record of proceedings upon petitions for attachments for contempt of court for violation of injunctions in labor disputes.

1898.

HAMPDEN COUNTY.

PAUL J. PLANT *et als. v.* HENRY K. WOODS *et als.*

366 Eq.

Apr. 8, 1899. *Petition for attachment for contempt* for violating terms of injunction.

Jul. 15, 1899. *Further petition.*

Mar. 28, 1900. *Memorandum* by *court* to effect that as injunction had been suspended pending appeal to Supreme Judicial Court no contempt could be committed in not obeying it.

Nov. 26, 1900. *All petitions for contempt dismissed,* by agreement.

1902.

SUFFOLK COUNTY.

AMERICAN WOOLEN COMPANY *v.* WEAVERS UNION *et als.*

825 Eq.

Jun. 23, 1902. *Petition for contempt proceedings* against several defendants.

Jul. 16, 1902. *Petition dismissed* as to all but one defendant.

Jul. 21, 1902. *New petition* against several defendants.

Aug. 1, 1902. *Master's report* of facts.

Sep. 24, 1902. *Petition dismissed.*

AMERICAN WOOLEN COMPANY *v.* THE WEAVERS UNION *et als.*

842 Eq.

Sep. 3, 1902. *Petition for attachment for contempt* against two defendants.

Sep. 11, 1902. *Finding* by court adjudging both defendants guilty of certain acts of intimidation in violation of the injunction.

Sep. 11, 1902. *Defendants sentenced* to four and two months in jail, respectively.

Oct. 24, 1902. *Both defendants discharged* upon petition.

JEROME E. LYNCH *v.* JOHN T. CASHMAN *et als.*

970 Eq.

Nov. 20, 1902. *Petition for attachment for contempt* alleging violation of injunction by interfering with one having contract with plaintiff by threats and sympathetic strike.

Feb. 16, 1903. *Master's report* finds that respondents had visited the persons alleged while the injunction proceedings were pending and made certain representations followed by a strike causing the person in question to break his contract with plaintiff.

June 23, 1903. *Defendants discharged* as the acts were done between November 7th and 17th, and while the memorandum was filed November 8th and the injunction issued November 14th (see *ante,* p. 131) it did not appear that the defendants were fixed with notice of it until November 18th.

1903.

ESSEX COUNTY.

PATRICK J. HARNEY *et als. v.* KNIGHTS OF LABOR NO. 3662.

2566 Eq.

May 1, 1903. *Petition for attachment for contempt* against two defendants alleging a violation of the injunction.

May 29, 1903. *Decree* discharging one defendant. The other failed to appear and was defaulted.

1904.

SUFFOLK COUNTY.

LEROY K. MCKOWN *v.* WILLIAM H. FRAZIER *et als.*

1945 Eq.

Jan. 12, 1905. *Petition for attachment for contempt* against one defendant.

Mar. 13, 1905. *Attachment* issued on defendant's failure to appear.

1906.

SUFFOLK COUNTY.

PERKINS WOODWORKING COMPANY *v.* W. D. MCINTOSH *et als.*

3795 Eq.

May 17, 1906. *Petition for attachment for contempt* for violation of injunction in causing a sympathetic strike on a customer of the plaintiff.

(No further proceedings taken under this petition.)

ROBERT CASSON *et als. v.* W. D. MCINTOSH *et als.*

3847 Eq.

Oct. 8, 1906. *Petition for attachment for contempt.* For proceedings under this petition see decisions of Supreme Court, *Casson* v. *McIntosh,* 199 Mass. 443, *ante,* p. 86.

JACOB LEWITZKY *et als. v.* INDEPENDENT RAG WORKERS OF MASSACHUSETTS *et als.*

3886 Eq.

Jul. 16, 1906. *Petition for contempt proceedings* against several defendants.

Jul. 31, 1906. *Master's report.* All differences adjusted.

ESSEX COUNTY.

EDWARD T. REYNOLDS *v.* GEORGE H. DAVIS.

116 Eq.

Nov. 27, 1906. *Petition for attachment.*

Nov. 27, 1906. *Petition for attachment for contempt.*

Dec. 19, 1906. *Contempt proceedings dismissed.*

Feb. 4, 1907. *Petition for attachment for contempt.*

Feb. 27, 1907. *Order on petition for contempt.* Fine of $100.

Feb. 1, 1909. *Petition for attachment for contempt.*

Feb. 15, 1909. *Order on petition for contempt.* Defendant found not guilty and discharged.

ESSEX MACHINE COMPANY *v.* MACHINISTS UNION *et als.*

118 Eq.

Jun. 20, 1906. *Petition for attachment for contempt* alleging violation of injunction by participating in violent demonstrations and assaults against non-union workmen.

Jul. 2, 1906. *Findings* by court on above petition that defendants had done the acts alleged and that two of the three defendants acted with knowledge of the injunction.

Jul. 2, 1906. *Sentences* of 10 days in jail imposed on those defendants who had knowledge of the injunction. The other was discharged.

NORFOLK COUNTY.

J. STEARNS CUSHING *v.* INTERNATIONAL TYPOGRAPHICAL UNION *et als.*

4268 Eq.

Jul. 10, 1906. *Petition for attachment for contempt.*

(No further proceedings were taken under this petition.)

1907.

SUFFOLK COUNTY.

ISADORE MOSS *et als. v.* UNITED GARMENT WORKERS OF AMERICA *et als.*

4571 Eq.

Apr. 22, 1907. *Petition for attachment.*

(No hearing was had or order made on this petition.)

ERNEST AUERBACH *et als. v.* UNITED GARMENT WORKERS OF AMERICA.

4572 Eq.

Apr. 18, 1907. *Petition for attachment for contempt.*

(No hearing was had or order made on this petition.)

Aubrey Hilliard *v.* Daniel J. Tobin *et als.*
11171 Eq.

Jun. 4, 1907. *Petition for attachment for contempt* against another defendant alleging interference with plaintiff's customers.

Jun. 14, 1907. *Petition dismissed.* Defendants found not guilty.

F. Knight & Son Corporation *v.* Daniel J. Tobin *et als.*
11179 Eq.

Jun. 27, 1907. *Petition for attachment for contempt* alleging assault on non-union workmen.

Jul. 9, 1907. *Respondent found guilty.*

Jul. 9, 1907. *Sentenced* to 30 days in jail.

HAMPDEN COUNTY.

National Blank Book Company *v.* Max Hoffman *et als.*
3971 Eq.

Sep. 6, 1907. *Petition for attachment.*

Oct. 4, 1907. *Petition for attachment.*

No proceedings under these petitions.

In *Flanders* v. *Tobin* (Suffolk, 1907) a petition was filed alleging a contempt of court which did not consist in the violation of an injunction. The respondent was found guilty of a violent assault upon a witness who appeared at the hearing upon the question of a temporary injunction. He received a sentence of five months in jail.

SUBJECT INDEX.

Competition — *Con.*

Or an attempt to compel non-union workmen to join union by interfering with their employment.

Plant v. *Woods*, 176 Mass. 492, *ante*, 44.

Procuring discharge of non-union man by employer who has agreed not to employ men objectionable to union for no reason other than that he will not join union is not justifiable on ground of competition.

Berry v. *Donovan*, 188 Mass. 353, *ante*, 58.

An agreement of the members of manufacturers' association not to transact any business with non-members under penalty of heavy fines *held* not justifiable as lawful competition.

Martell v. *White*, 185 Mass. 255, *ante*, 52.

Conspiracy.

A criminal conspiracy is a combination to bring about an unlawful result or to bring about a lawful result by unlawful means.

Commonwealth v. *Hunt*, 4 Met. 111, *ante*, 13.

It is not universally true that what any one man alone may do, any number of concerted men may do.

L. D. Willcutt & Sons Co. v. *Driscoll*, 200 Mass. 110, *ante*, 87.

A combination of workmen with the design of acting together with the design of improving the conditions under which they work, where it does not appear that the use of unlawful means is a part of the purpose of the combination is not an unlawful conspiracy.

Snow v. *Wheeler*, 133 Mass. 179, *ante*, 32.

For an example of what is said to be an unlawful conspiracy because it was a combination to bring about a lawful result by the use of unlawful means, see

L. D. Willcutt & Sons Co. v. *Driscoll*, 200 Mass. 110, *ante*, 87.

For other examples of unlawful combinations, see *infra*, Unlawful Interference.

Contempt of Court.

Evidence examined and held not to support finding adjudging respondents to be in contempt of court in violating a temporary injunction.

Casson v. *McIntosh*, 199 Mass. 443, *ante*, 86.

Contract of Employment.

Where there is a formal contract to work or to employ for a fixed time it is unlawful in any way to persuade or attempt to persuade either party to break such contract.

Walker v. *Cronin*, 107 Mass. 555, *ante*, 28.
Beekman v. *Marsters*, 195 Mass. 205, *ante*, 77.

Where either party has a right to terminate the relation of employer and employed at will, persuasion so to do is unlawful unless in the exercise of the right of competition and by means which are lawful in themselves.

Walker v. *Cronin*, 107 Mass. 555, *ante*, 28.
Plant v. *Woods*, 176 Mass. 492, *ante*, 44.
Moran v. *Dunphy*, 177 Mass. 485, *ante*, 51.
Berry v. *Donovan*, 188 Mass. 353, *ante*, 58.
Pickett v. *Walsh*, 192 Mass. 572, *ante*, 63.

Injunction — *Con.*

Against breaking contract induced by threat of general strike, allowed.
Ibid.

Against interference in the future with contracts not described in the bill, refused.
Ibid.

Against attempting to induce breach of existing formal contract, allowed.
Beekman v. *Marsters*, 195 Mass. 205, *ante*, 77.

Against doing any acts whatever in furtherance of unlawful strike, allowed.
Reynolds v. *Davis*, 198 Mass. 294, *ante*, 82.

Against paying strike benefits, allowed.
Ibid.

Against placing name of employer on "unfair list," allowed.
Ibid.

Restraining the imposition of fines and threats of such imposition in order to prevent persons from entering the employment of one against whom a strike was in progress, allowed.
L. D. Willcutt & Sons Co. v. *Driscoll*, 200 Mass. 110, *ante*, 87.

Interference.

With rights under formal contract.

With right to employ or be employed.
See *infra*, Unlawful Interference.

Intimidation.

Of present or prospective employees.

Display of banners bearing inscriptions referring to an existing strike near premises of employer may be unlawful intimidation.
Sherry v. *Perkins*, 147 Mass. 212, *ante*, 33.

The flow of labor to an employer cannot be obstructed by intimidation produced by means of injury to person or property or by threats of such injury.
Vegelahn v. *Guntner*, 167 Mass. 92, *ante*, 39.

Crowding about employer's doorway, blocking same and jostling employees, enjoined as unlawful intimidation.
Ibid.

Maintaining patrol in front of premises of employer against whom strike is in progress *held* to be unlawful intimidation.
Ibid.

Imposition of fines by labor union upon members who refuse to leave the employ of a contractor against whom the union is conducting a strike *held* to be unlawful intimidation.
L. D. Willcutt & Sons Co. v. *Driscoll*, 200 Mass. 110, *ante*, 87.

Of employer to compel discharge of employee.

Inducing employer to discharge non-union workman by threat of strike or boycott is unlawful intimidation.
Plant v. *Woods*, 176 Mass. 492, *ante*, 44.

Strike — *Con.*

Where employees made four demands of which two related to wages and hours of labor and the others were that all foremen should be members of a union and that the business agents of the union should be allowed to visit any building under construction, a strike following the bare refusal of all the demands was treated as a justifiable strike so far as represents its ultimate object.

L. D. Willcutt & Sons Co. v. *Driscoll*, 200 Mass. 110, *ante*, 87.

A lawful strike may not be carried on by intimidation or other unlawful means.

Ibid.

Lawfulness of a strike depends on purpose for which it is carried on.

Reynolds v. *Davis*, 198 Mass. 294, *ante*, 82.

A strike by a combination of bricklayers who refused to lay bricks if the pointing of them is given to others is a lawful strike because the principle of competition justifies a refusal to do any work unless all of it is given.

Pickett v. *Walsh*, 192 Mass. 572, *ante*, 63.

Unlawful.

Strike to compel discharge of non-union men is unlawful.

Plant v. *Woods*, 176 Mass. 492, *ante*, 44.

Aberthaw Construction Co. v. *Cameron*, 194 Mass. 209, *ante*, 74.

A strike to compel employer to pay to association of employees a "fine" which he is under no legal liability to pay *held* unlawful.

Carew v. *Rutherford*, 106 Mass. 1, *ante*, 24.

Union rules and by-laws considered as an element in determining lawfulness of strike.

Reynolds v. *Davis*, 198 Mass. 294, *ante*, 82.

A strike to compel the establishment of a "closed shop" is illegal.

Ibid.

A sympathetic strike is unlawful.

Pickett v. *Walsh, ubi supra.*

Reynolds v. *Davis, ubi supra.*

The imposition by a labor union of fines upon its members to induce them to leave the employ of one against whom the union is conducting a strike *held* to be unlawful intimidation.

Reynolds v. *Davis, ubi supra.*

Where a strike is illegal doing any acts whatever, in furtherance thereof, may be enjoined.

Reynolds v. *Davis*, 198 Mass. 294, *ante*, 82.

See Sympathetic Strike.

Strike Benefits.

Paying strike benefits enjoined where strike was unlawful.

Reynolds v. *Davis*, 198 Mass. 294, *ante*, 82.

Sympathetic Strike.

Strike on a contractor to force him to force one with whom he had contract to yield in a dispute which a third person has with the striking employees is unlawful and will be enjoined.

Pickett v. *Walsh*, 192 Mass. 572, *ante*, 63.

Unlawful Interference — *Con.*

It is unlawful to threaten a general strike of all workmen engaged upon a building under construction in order to compel the owner to force one of the contractors to yield in a dispute with his employees by breaking or threatening to break his contract with him.

Aberthaw Construction Co. v. *Cameron,* 194 Mass. 209, *ante,* 74.

Such action will be enjoined.

Ibid.

And if the owner in consequence of such action threatens to break such a contract he also may be enjoined from so doing.

Ibid.

With right to employ or be employed.

Intentional interference with right to employ or to be employed is unlawful unless it can be justified as lawful competition.

Walker v. *Cronin, ubi supra.*

Berry v. *Donovan,* 188 Mass. 353, *ante,* 58.

Such interference by the use of force, threats, or other intimidation is unlawful.

Sherry v. *Perkins,* 147 Mass. 212, *ante,* 33.

Vegelahn v. *Guntner,* 167 Mass. 92, *ante,* 39.

It is not a justification for such interference that its object is to strengthen the union by compelling the persons whose employment is interfered with to join it, for that is not within the bounds of lawful competition.

Plant v. *Woods,* 176 Mass. 492, *ante,* 44.

And see the references below.

With right to be free in carrying on one's business.

Interference with one's business by combining to agree not to trade with him under penalty of heavy fines is unlawful by reason of the means used to make it effective.

Martell v. White, 185 Mass. 255, *ante,* 52.

Combination of workmen to compel employer to pay to them a "fine" which he is under no legal liability to pay by threatening or instituting a strike is an unlawful interference with his rights.

Carew v. *Rutherford,* 106 Mass. 1, *ante,* 24.

A combination to compel by a strike the establishment and maintenance of a "closed shop," is unlawful.

Reynolds v. *Davis,* 198 Mass. 294, *ante,* 82.

A strike in the nature of a sympathetic strike is not to be justified upon the ground of trade competition.

Pickett v. *Walsh,* 192 Mass. 572, *ante,* 63.

TABLE OF CASES.

APPENDIX.

CERTAIN BILLS INTRODUCED IN THE LEGISLATURE, 1909.

SENATE BILL NO. 133.

AN ACT TO REGULATE THE ISSUANCE OF RESTRAINING ORDERS AND INJUNCTIONS AND PROCEDURE THEREON, AND TO LIMIT THE MEANING OF CONSPIRACY, IN CERTAIN CASES.

Be it enacted, etc., as follows:

SECTION 1. No restraining order or injunction shall be granted by any court of the commonwealth of Massachusetts or a judge or the judges thereof in any case between an employer and an employee or between employers and employees, or between employees, or between persons employed to labor and persons seeking employment as laborers or between persons seeking employment as laborers or involving or growing out of a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury to property or to a property right of the party making the application for which injury there is no adequate remedy at law, and such property or property right must be particularly described in the application, which must be in writing and sworn to by the applicant or by his, her, or its agent or attorney. And for the purpose of this act no right to continue the relation of employer and employee or to assume or create such relation with any particular person or persons, or at all, or to carry on business of any particular kind, or at any particular place, or at all, shall be construed, held, considered or treated as property or as constituting a property right.

SECTION 2. In cases arising in the courts of the commonwealth of Massachusetts or coming before said courts or before any judge or the judges thereof, no agreement between two or more persons concerning the terms or conditions of employment of labor or the assumption or creation or termination of any relation between employer and employees or concerning any act or thing to be done or not to be done with reference to or involving or growing out of a labor dispute, shall constitute a conspiracy or other criminal offence or be punished or prosecuted as such unless the act or thing agreed to be done or not to be done would be unlawful if done by a single individual, nor shall the entering into or the carrying out of any such agreement be restrained or enjoined unless such act or thing agreed to be done would be subject to be restrained or enjoined under the provisions, limitations and definition contained in the first section of this act.

SECTION 3. That all acts and parts of acts in conflict with the provisions of this act are hereby repealed.

SECTION 4. This act shall take effect upon its passage.

NOTE. — This bill accompanied the petition of J. R. Crozier for legislation regulating the issuance of restraining orders and injunctions and procedure thereon, and limiting the meaning of "conspiracy" in certain cases. The Bill was referred to the Committee on the Judiciary, and on February 5 it was referred in concurrence to the Committees on the Judiciary and Labor sitting jointly. Hearings were held on February 24 and 25 and were closed on February 25. The Committees reported on March 10 "leave to withdraw." This report was accepted by the Senate on March 23 and by the House on April 9.

SENATE BILL NO. 143.

AN ACT TO ALLOW PEACEFUL COMMUNICATIONS WITH APPLICANTS FOR POSITIONS DURING STRIKES, LOCKOUTS AND LABOR DISPUTES.

Be it enacted, etc., as follows:

SECTION 1. In case that a dispute arising between an employer and his employees results in a strike or a lockout it shall be the duty of the chief of police or any officer acting in the capacity of chief of police in the city or town where the strike or lockout occurs, by a conference with the leaders of the strikers and by an inspection of the records of the employer which denote or which have denoted the number of men employed, to ascertain the number of men who have gone out upon a strike or who have been locked out.

SECTION 2. It shall be lawful for men on strike or for men who have been locked out, at a meeting called for the purpose, to elect by ballot representatives, who shall be permitted to walk upon the public streets and ways in the vicinity of the place of employment or in any other place to which said representatives have lawful access, and in a peaceful manner to converse with persons intending to go to such employer for work, for the purpose of informing such persons of actual conditions, facts and circumstances in order to induce them not to enter into, or, if already employed, not to continue in the service of said employer. Nothing in this act shall be construed to permit any person or persons to obstruct travel upon or over any public street or way.

SECTION 3. The number of representatives above designated shall not exceed one for every twenty strikers: *provided,* that if the total number as recorded by the chief of police gives an even number of representatives with a fraction over, the larger fraction of twenty shall be entitled to one representative, and *provided, further,* that if the whole number of strikers is less than twenty said strikers shall be entitled to one representative.

SECTION 4. Only one set of representatives shall be elected during any one strike or lockout: *provided, only,* that in case of death or physical or mental disability the chief of police or any officer acting in the capacity of chief of police of the city or town where the strike or lockout occurs, shall issue a permit to the men on strike or those locked out to fill the vacancy so occasioned.

SECTION 5. The chairman and secretary of the meeting at which said representatives are elected shall immediately furnish each of said representatives with proper credentials, signed by the chairman and secretary of said meeting, certifying their election as such representatives, and designating them as representatives for peaceful communication. Said representatives shall within twenty-four hours after the election present said credentials to the chief of police or any officer acting in the capacity of chief of police of the city or town where the strike occurs, and said chief or officer shall record the names and places of residence of said representatives and shall countersign said credentials. Said representatives shall at all times when engaged in said peaceful communication bear upon their persons said credentials.

SECTION 6. This act shall take effect upon its passage.

NOTE. — This bill accompanied the petition of J. R. Crozier for legislation permitting peaceful communications with applicants for positions during strikes, lockouts, and labor disputes. It was referred in concurrence to the Committee on Labor on January 29 and on February 5 to the Committee on Labor and the Committee on the Judiciary sitting jointly. Hearings were held on February 24 and 25 and were closed on February 25. The Committee reported on March 10 "leave to with-

draw." This report was accepted by the Senate on March 23 and by the House on April 12.

SENATE BILL NO. 34.

An Act relative to Strikes.

Be it enacted, etc., as follows:

No strike or other action of a labor union shall be enjoined or deemed unlawful, merely because it is enforced against the members by the imposition of fines under by-laws previously adopted, or because it is ordered by a committee or board of officers, acting under authority of the union, regularly conferred.

Note. — This bill accompanied the petition of Francke W. Dickinson for legislation to establish the legality of strikes enforced by labor unions by the imposition of fines upon their members. It was referred to the Committees on the Judiciary and Labor, sitting jointly, which on March 10 reported that the petitioner be given "leave to withdraw." On March 18 Senator Ross, of New Bedford, moved as an amendment to the report that the following bill be substituted:

SENATE BILL NO. 256.

An Act relative to the Imposition and Collection of Fines by Certain Associations.

Be it enacted, etc., as follows:

Section 1. No fine or notice of intention to impose a fine by any association, incorporated or unincorporated, or any authorized representative thereof, upon any member thereof, according to the rules thereof to which such member has agreed to conform, shall be held to be unlawful or coercive as to such member or to any other person, provided such fine is reasonable in amount and is for a purpose which is legal for such association to seek to accomplish by peaceable persuasion.

Section 2. This act shall take effect upon its passage.

The Senate rejected Mr. Ross' motion to substitute by a roll-call vote of 13 to 14.

The above bill is practically a duplicate of Senate Bill 130, the title and the text of section 1 having been changed so that the act would apply to "trade unions and certain other associations" instead of to "any association."